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April 27, 2012

Ms. Ann Cole  
Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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CLERK

**Re: Docket No. 110234-TP  
Complaint of BellSouth Telecommunications, LLC d/b/a AT&T  
Florida Against Halo Wireless, Inc.**

Dear Ms. Cole:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, LLC d/b/a AT&T Florida's Direct Testimony of J. Scott McPhee and Mark Neinast, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,

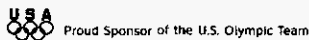
Tracy W. Hatch

cc: Parties of Record  
Gregory R. Follensbee  
Suzanne L. Montgomery

J. Scott McPhee - 02685-12

Mark Neinast - 02686-12

- COM \_\_\_\_\_
- APA \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL 1 (lower letter)
- RAD 1 (lower letter)
- SRC \_\_\_\_\_
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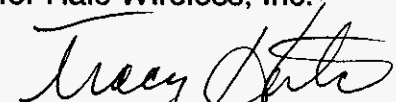
**Certificate of Service  
Docket No. 110234-TP**

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 27th day of April, 2012 to the following:

Larry Harris, Staff Counsel  
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Attys. for Halo Wireless, Inc.

  
\_\_\_\_\_  
Tracy W. Hatch

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

DIRECT TESTIMONY OF J. SCOTT MCPHEE  
ON BEHALF OF AT&T FLORIDA

APRIL 27, 2012

COM 5  
APA \_\_\_\_\_  
ECR \_\_\_\_\_  
GCI 8  
RAD 1  
SRC \_\_\_\_\_  
ADM \_\_\_\_\_  
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G. Ref. 1

DOCUMENT NUMBER DATE

02685 APR 27 2012

FPSC-COMMISSION CLERK

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San  
4 Ramon, California.

5 **Q. ON WHOSE BEHALF ARE YOU PROVIDING YOUR TESTIMONY**  
6 **TODAY?**

7 A. BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T Florida” or  
8 “AT&T”).

9 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

10 A. I am an Associate Director – Wholesale Regulatory Policy & Support for Pacific Bell  
11 Telephone Company d/b/a AT&T California. I work on behalf of the AT&T  
12 incumbent local exchange carriers (“ILECs”) throughout AT&T’s 22-state ILEC  
13 territory. I am responsible for providing regulatory and witness support relative to  
14 various wholesale products and pricing, supporting negotiations of local  
15 interconnection agreements (“ICAs”) with competitive local exchange carriers  
16 (“CLECs”) and Commercial Mobile Radio Service (“CMRS”) providers,  
17 participating in state commission and judicial proceedings, and guiding compliance  
18 with the Federal Telecommunications Act of 1996 (“1996 Act” or “Act”) and its  
19 implementing rules.

20 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

21 A. I received my Bachelor of Arts degree with a double major in Economics and  
22 Political Science from the University of California at Davis.

1 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE AT AT&T.**

2 A. I began employment with AT&T's predecessor, SBC, in 2000 in the Wholesale  
3 Marketing – Industry Markets organization as Product Manager for Reciprocal  
4 Compensation throughout SBC's 13-state region. My responsibilities included  
5 identifying policy and product issues to assist negotiations and witnesses addressing  
6 SBC's reciprocal compensation and interconnection arrangements, as well as SBC's  
7 transit traffic offering. In June of 2003, I moved into my current role as an Associate  
8 Director in the Wholesale Marketing Product Regulatory organization. In this  
9 position, my responsibilities include helping define AT&T's positions on certain  
10 issues for Wholesale Marketing, and ensuring that those positions are consistently  
11 articulated in proceedings before state commissions.

12 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE PUBLIC UTILITY**  
13 **COMMISSIONS?**

14 A. Yes, I have testified before several state public utility commissions on  
15 telecommunications issues. Virtually all of those cases involved the arbitration of  
16 ICAs or disputes regarding the interpretation or enforcement of ICAs, like the one at  
17 issue in this proceeding.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA**  
19 **COMMISSION?**

20 A. I have not provided live testimony before the Florida Commission, though I provided  
21 pre-filed written testimony in Docket No. 100176-TP, *In re: Petition for arbitration*  
22 *of interconnection agreement between BellSouth Telecommunications, Inc. d/b/a*  
23 *AT&T Florida and Sprint Communications Company L.P.*; and Docket No. 100177-  
24 *TP, In re: Petition for arbitration of interconnection agreement between BellSouth*

1            *Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel*  
2            *South Corp. and NPCR, Inc. d/b/a Nextel Partners.*

3    **Q.    HAVE YOU TESTIFIED BEFORE ANY OTHER STATE COMMISSIONS ON**  
4    **THE SUBJECTS YOU WILL ADDRESS IN THIS TESTIMONY?**

5    A.    Yes. AT&T and Halo are contesting in a number of other state commissions the same  
6           issues they are contesting here. As of the date of this direct testimony, I have filed  
7           testimony and reviewed Halo's written testimony in parallel proceedings in several  
8           other states, and testified at the evidentiary hearings in the Georgia, South Carolina,  
9           Tennessee and Wisconsin proceedings. As a result, I am familiar with the positions  
10          Halo has been advancing on the issues in this case.

11   **Q.    WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

12   A.    I will discuss AT&T Florida's ICA with Halo and the claims AT&T Florida has made  
13          for breach of the ICA. I will also provide background on the disputes and why they  
14          are important.

15   **Q.    WHAT IS AT&T FLORIDA'S MAIN COMPLAINT AGAINST HALO?**

16   A.    Halo is sending landline-originated traffic to AT&T Florida in violation of the  
17          parties' ICA. In addition, Halo for many months disguised traffic (by modifying the  
18          call records) so that toll traffic appeared to our billing systems to be local traffic.  
19          Halo has now discontinued that practice, but it was nonetheless a breach of the  
20          parties' ICA. The effect of Halo's delivery of landline-originated traffic in breach of  
21          the ICA (both when Halo was modifying the call records and since it discontinued  
22          that practice) has been to enable Halo to avoid paying the AT&T ILECs millions of

1 dollars in applicable access charges. This case is necessary to put an end to Halo's  
2 continuing breach of its ICA with AT&T Florida.

3 **Q. HAS THE FCC RECENTLY ADDRESSED THE EFFECTS OF ACCESS-**  
4 **AVOIDANCE SCHEMES?**

5 A. Yes. On November 18, 2011, the FCC issued its *Connect America Order*.<sup>1</sup> In the  
6 words of FCC Commissioner Michael J. Copps, that Order

7 puts the brakes on the arbitrage and gamesmanship that have plagued  
8 [intercarrier compensation] for years *and that have diverted private*  
9 *capital away from real investment in real networks*. By some  
10 estimates . . . phantom traffic affects nearly one-fifth of the traffic on  
11 the carriers' networks. Today we say "no more."<sup>2</sup>

12 **Q. WHAT FINANCIAL IMPACT DOES HALO'S ACCESS CHARGE**  
13 **AVOIDANCE SCHEME HAVE ON AT&T FLORIDA?**

14 A. Through March 2012, Halo owed AT&T Florida \$3,129,048.01 in unpaid access  
15 charges, and the debt continues to increase significantly each month.<sup>3</sup> From January  
16 2011 through March 2012, the monthly volume of traffic Halo sent to AT&T Florida  
17 increased over 1990%. Halo is now sending AT&T Florida more than 20.3 million  
18 minutes a month. Across AT&T's 22-state ILEC territory, Halo owed AT&T  
19 approximately \$18,379,742 in unpaid access charges as of March 2012. As in  
20 Florida, that amount continues to grow, to the tune of about \$1.2 million per month.

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<sup>1</sup> Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90 *et al.*, 2011 WL 5844975 (rel. Nov. 19, 2011) ("*Connect America Order*") (emphasis added).

<sup>2</sup> *Id.* at p. 749 (statement of Commissioner Michael J. Copps).

<sup>3</sup> This represents the difference between the reciprocal compensation charges Halo has paid and the switched access charges that it should have paid on access traffic. I explain reciprocal compensation charges and access charges below.

1 **Q. WHY IS IT IMPORTANT FOR THE COMMISSION TO DECIDE THIS**  
2 **CASE PROMPTLY?**

3 A. Simply because the longer Halo can keep its access charge avoidance scheme going,  
4 the more it improperly gains and the more AT&T Florida and other carriers unjustly  
5 lose. This is especially so with Halo having filed for bankruptcy, which makes it  
6 even less likely that AT&T Florida will ever receive the access charges it is owed.  
7 Halo should not be permitted to continue to “run a tab” on AT&T’s network by  
8 sending traffic that is not authorized by the ICA and not paying the applicable rates  
9 for its traffic. Because Halo has breached its ICA with AT&T Florida, AT&T should  
10 be allowed to stop accepting traffic from Halo (as AT&T was allowed to do in  
11 Tennessee on precisely the grounds it asserts here) in order to avoid future financial  
12 harm from Halo not paying the applicable charges for its traffic and facilities.<sup>4</sup>

13 **II. BACKGROUND**

14 **Q. WHAT IS HALO?**

15 A. Halo Wireless, Inc. is a corporation organized and operating under the laws of the  
16 state of Texas. The company is headquartered in Fort Worth, Texas.

17 **Q. WHO ARE HALO’S OFFICERS?**

18 A. Halo’s officers are:

19 Russell Wiseman, President

20 Jeff Miller, Chief Financial Officer

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<sup>4</sup> In light of Halo’s pending bankruptcy proceeding, AT&T Florida does not ask the Commission to order payment of any money as part of this case. AT&T Florida does, however, ask the Commission to declare that Halo should be required to pay AT&T Florida the applicable access charges on the traffic Halo has sent. Liquidation of these amounts and other payment issues presumably will be dealt with in the bankruptcy court.



1 Carolyn J. Malone, Secretary/Treasurer<sup>5</sup>

2 **Q. DOES HALO HAVE ANY EMPLOYEES?**

3 A. Halo has only two employees – Jeff Miller and Carolyn Malone, each of whom is  
4 paid \$500 per month. While Halo identifies Russell Wiseman as its President, Mr.  
5 Wiseman is not an employee of Halo. Mr. Wiseman is paid as an employee of an  
6 affiliate company, Source Communications of America. Halo does not pay Mr.  
7 Wiseman any compensation.<sup>6</sup>

8 **Q. WHO OWNS HALO?**

9 A. Halo is owned by Scott Birdwell (50%), Gary Shapiro (10%), and Timothy Terrell  
10 (40%).<sup>7</sup>

11 **Q. WHAT DOES HALO CLAIM TO BE?**

12 A. Halo claims to be a commercial mobile wireless service (“CMRS”) provider.

13 **Q. WHAT TYPE OF EQUIPMENT DOES HALO CLAIM TO OPERATE?**

14 A. Halo claims to operate wireless “base stations” by which it connects to its  
15 “customers.” Halo leases the base station equipment from a company called SAT

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<sup>5</sup> See Exhibit JSM-1 at 10 (*Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc.*, Docket No. 9594-TI-100, Halo Wireless, Inc. and Transcom Enhanced Services, Inc.’s Answers (without Exhibits) on Issues 1-8 in the Notice of Proceeding (filed with Pub. Serv. Comm’n of Wisc., Dec. 2, 2011) (“Halo/Transcom Wisconsin Answers”).

<sup>6</sup> See Exhibit JSM-2 at 8-9 (*In re: Halo Wireless, Inc.*, United States Bankruptcy Court for the Eastern District of Texas, Case No. 11-42464 (“*Halo Bankruptcy proceeding*”), Transcript of Proceeding Conducted by United States Trustee, Section 341 Meeting of Creditors held Sept, 19, 2011 (“Creditors’ Meeting Transcript”).

<sup>7</sup> See Exhibit JSM-1 at 10.

1 Net.<sup>8</sup> SAT Net is another affiliate of Halo. The officers of SAT Net include the same  
2 Jeff Miller and Carolyn Malone who are the officers/employees of Halo. The common  
3 owners/investors between SAT Net and Halo are Scott Birdwell, Gary Shapiro, and Tim  
4 Terrell.<sup>9</sup>

5 **Q. WHERE DOES HALO GET ITS REVENUE?**

6 A. Halo gets 100% of its revenue from a closely affiliated company called Transcom.<sup>10</sup>

7 In fact, if we assume, just for the sake of discussion, that Transcom is a “customer” of  
8 Halo, as Halo claims it is, then Transcom is virtually Halo’s *only* customer in Florida.

9 In a submission it made in the parallel proceeding in Wisconsin on January 11, 2012,

10 Halo stated that it had 35 consumer customers – just three of whom were in Florida.

11 And Halo has also acknowledged that none of its so-called “consumer customers” is a  
12 paying customer.

13 **Q. WHAT IS TRANSCOM?**

14 A. Transcom is a corporation organized and operating under the laws of the state of  
15 Texas. Headquartered in Fort Worth, Texas, Transcom operates switches in Dallas,  
16 New York, Atlanta and Los Angeles. Transcom accepts traditional circuit-switched  
17 protocols such as Time Division Multiplexing (“TDM”) at these switches.<sup>11</sup>

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<sup>8</sup> Exhibit JSM-2 (Excerpts from Creditors’ Meeting Transcript) at 14. The entire transcript is voluminous and will be made available to the Commission or the parties upon request.

<sup>9</sup> Exhibit JSM-2 at 15-16.

<sup>10</sup> Exhibit JSM-1 at 4-5 (“Currently, the only [high volume] customer is Transcom, and traffic from Transcom provides 100 percent of Halo’s current revenues . . .”).

<sup>11</sup> Exhibit JSM-3 (Transcom web pages).

1 Transcom has represented on its website that the company's "core service offering" is  
2 "voice termination services."<sup>12</sup> Voice termination service is the intermediate routing  
3 of telephone calls between carriers for termination to the carriers serving the called  
4 party. On its website, Transcom stated that it terminates "nearly one billion minutes  
5 per month," and provides service to the largest Cable/MSOs, CLECs, broadband  
6 service providers, and wireless customers.<sup>13</sup>

7 **Q. WHO ARE TRANSCOM'S OFFICERS?**

8 A. The officers of Transcom are largely the same as Halo. The officers of Transcom are:

9 Scott Birdwell, CEO and Chairman

10 W. Britt Birdwell, COO and President

11 Jeff Miller, Chief Financial Officer

12 Carolyn J. Malone, Secretary and Treasurer<sup>14</sup>

13 **Q. WHO OWNS TRANSCOM?**

14 A. There are several investors. Scott Birdwell is the largest single individual owner.<sup>15</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* AT&T has pointed out in other state commission proceedings Transcom's declaration on its website that Transcom's core service offering is voice termination services. AT&T has also pointed out that contrary to Transcom's position in these proceedings that it is an enhanced service provider, Transcom's self-description on its website made no mention whatsoever of enhanced services. Transcom, evidently recognizing that its candor on its website was detracting from the picture it was trying to paint in these proceedings, recently changed its website. That change does not help the Transcom/Halo cause here; rather, it is an acknowledgement that the admissions on the website were hurting Transcom/Halo. In fact, the Transcom representative who routinely testifies on behalf of Halo in these cases admitted in pre-filed testimony in South Carolina that Transcom changed its website specifically because AT&T was pointing out the website admissions in these proceedings.

<sup>14</sup> Exhibit JSM-1 at 11.

1 **Q. IS THIS THE SAME SCOTT BIRDWELL WHO IS THE MAIN**  
2 **SHAREHOLDER OF HALO?**

3 A. Yes, this is the same Scott Birdwell who also controls Halo. Mr. Wiseman, in his  
4 current capacity as the President of Halo (having replaced Mr. Birdwell in that  
5 capacity), reports to a management committee of the investor-owners: Scott  
6 Birdwell, Jeff Miller, and Carolyn Malone.<sup>16</sup>

7 **Q. WHAT IS YOUR UNDERSTANDING OF THE RELATIONSHIP BETWEEN**  
8 **TRANSCOM AND HALO?**

9 A. Transcom and Halo are operating in concert in an attempt to avoid access charges.  
10 Transcom aggregates third-party toll traffic by selling its “voice termination service,”  
11 then hands the traffic off to Halo, which mischaracterizes the traffic as wireless-  
12 originated intraMTA traffic.

13 **Q. HOW AND WHY WOULD HALO AND TRANSCOM BE ACTING**  
14 **TOGETHER?**

15 A. Transcom appears to be a very high-volume “least-cost router”<sup>17</sup> operating in the  
16 middle of toll calls. To the best of my knowledge, and based on everything Halo has  
17 said in other state proceedings, neither Transcom nor any customer of Transcom  
18 actually initiates any telephone calls. Rather, Transcom takes calls initiated by  
19 customers of other carriers and then hands the calls off to someone else (here, Halo)  
20 *before* the calls are delivered to the carrier that actually terminates the call to an end

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<sup>15</sup> *Id.*

<sup>16</sup> Exhibit JSM-2 at 64.

<sup>17</sup> AT&T Florida witness Mark Neinast explains the term “least-cost router” at pages 10-11 of his prefiled Direct Testimony.

1 user. Halo and Transcom then argue that this process somehow transforms landline-  
2 originated traffic into wireless-originated traffic, and somehow transforms interMTA  
3 (i.e., toll) wireless traffic into intraMTA (i.e., local) traffic. In this way, Halo  
4 erroneously contends that none of the traffic it hands off to ILECs is access traffic or  
5 subject to access charges.

6 **Q. HAS TRANSCOM PREVIOUSLY BEEN ASSOCIATED WITH OTHER**  
7 **CARRIERS THAT ENGAGED IN ACCESS-AVOIDANCE PRACTICES?**

8 A. Yes. Transcom previously sent traffic to carriers like CommPartners and Global  
9 NAPS, which, like Halo, had schemes that appeared to be designed to avoid access  
10 charges. Global NAPS previously reported that a substantial portion of its traffic was  
11 delivered to it by Transcom.<sup>18</sup> With Global NAPS in receivership and CommPartners  
12 in bankruptcy, Halo provides a replacement vehicle for Transcom's continuing  
13 arbitrage.

14 **III. HALO'S DEALINGS WITH AT&T**

15 **Q. WHEN DID HALO BEGIN TO SEND TRAFFIC TO AT&T?**

16 A. Halo first sent traffic to AT&T in September 2010 in Texas. In Florida, Halo began  
17 to send traffic to AT&T in January 2011. Typically, when a carrier enters the market,  
18 there is a ramp-up period where one would expect growth to be steady, but not

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<sup>18</sup> *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, Docket C-2009-2093336, Opinion and Order entered March 16, 2010 (“the majority of [GNAPs’] traffic is received from three other carriers, Transcom, CommPartners and PointOne . . . .”); *Joint Petition Of Hollis Telephone et al for Authority to Block the Termination of Traffic from Global NAPs Inc.*, New Hampshire Public Utilities Commission, Docket No. DT 08-028, Reconsideration Order, Order No. 25,088 dated November 9, 2009; and *Matter of the Complaint of AT&T Ohio v. Global NAPs, Ohio, Inc.*, PUCO Case No. 08-690-TP-CSS, Opinion and Order dated June 9, 2010.

1 exponential. Halo is notable in that the rate its traffic has grown has been abnormally  
2 fast.

3 **Q. HAS HALO ENTERED INTO AN ICA WITH AT&T FLORIDA UNDER**  
4 **SECTIONS 251 AND 252 OF THE 1996 ACT?**

5 A. Yes. The ICA is attached to my testimony as Exhibit JSM-4. Halo actually opted  
6 into the ICA of another carrier, T-Mobile, subject to one important amendment,  
7 which I will discuss below. This Commission approved Halo's ICA, as amended,  
8 pursuant to Section 252(e) of the 1996 Act in Docket No. 100194-TP.

9 **Q. ARE THERE DIFFERENT TYPES OF INTERCONNECTION**  
10 **AGREEMENTS FOR DIFFERENT TYPES OF CARRIERS?**

11 A. Yes. Landline ICAs contain different terms and conditions than wireless ICAs due to  
12 different treatment of the different types of traffic. A major difference between  
13 landline and wireless ICAs concerns what constitutes a local call and the appropriate  
14 compensation for the exchange of such calls between the carriers' respective end  
15 users, as well as some differences in how landline and wireless carriers provision and  
16 pay for certain network facilities.

17 **Q. WHAT TYPE OF ICA DOES HALO HAVE WITH AT&T?**

18 A. The T-Mobile ICA Halo opted into with AT&T Florida is a wireless ICA.

19 **Q. WHAT IS THE SIGNIFICANCE OF THE AMENDMENT TO THE ICA**  
20 **THAT YOU MENTIONED?**

21 A. The ICA amendment that Halo agreed to when it adopted the ICA includes the  
22 following clause:

23 *Whereas, the Parties have agreed that this Agreement will apply only*  
24 *to (1) traffic that originates on AT&T's network or is transited through*

1 AT&T's network and is routed to Carrier's wireless network for  
2 wireless termination by Carrier; and (2) *traffic that originates through*  
3 *wireless transmitting and receiving facilities before [Halo] delivers*  
4 *traffic to AT&T* for termination by AT&T or for transit to another  
5 network. (Emphasis added).

6 Exhibit JSM-5 is a copy of this amendment. The significance of this amendment is  
7 that it clearly provides that Halo can *only* send wireless-originated traffic to AT&T  
8 Florida. Any landline-originated traffic sent by Halo to AT&T Florida for  
9 termination is in violation of the terms of the ICA.

10 **IV. HALO'S BREACH OF THE ICA BY SENDING LANDLINE TRAFFIC**

11 **Q. HAS HALO BEEN BREACHING THE ICA BY SENDING NON-WIRELESS-**  
12 **ORIGINATED TRAFFIC TO AT&T FLORIDA?**

13 A. Yes. As Count I of AT&T Florida's Complaint alleges, Halo has breached and is  
14 breaching the ICA by sending traffic that is originated when a retail end user places a  
15 call using a landline telephone. This is not "traffic that originates through wireless  
16 transmitting and receiving facilities" as required by the ICA. Count II of the  
17 Complaint alleges that Halo presented inaccurate call information that effectively  
18 disguised the type of traffic it sent to AT&T. AT&T Florida witness Mark Neinast  
19 explains how AT&T discovered the true nature of the calls that Halo has been  
20 sending to AT&T.

21 **Q. WHY DOES IT MATTER WHETHER HALO SENDS AT&T LANDLINE-**  
22 **ORIGINATED OR WIRELESS-ORIGINATED TRAFFIC?**

23 A. First and foremost, of course, it is important because the ICA requires Halo to send  
24 AT&T Florida wireless-originated traffic only. There are no provisions in the ICA  
25 that allow Halo to send AT&T Florida landline traffic. Accordingly, Halo breached  
26 the contract when it did not abide by that requirement. Second, there is a significant

1 difference in what Halo is required to pay AT&T Florida for terminating landline  
2 traffic (if such traffic were allowed) versus terminating wireless traffic. This is  
3 known as “intercarrier compensation.” Different intercarrier compensation rates  
4 apply depending on whether traffic is local or non-local, and the definitions of what  
5 qualifies as local or non-local differ depending on whether the traffic is wireless or  
6 landline. Halo has been breaching its ICA by sending non-local landline traffic to  
7 AT&T Florida but then claiming the traffic is actually wireless and local, in order to  
8 pay a lower intercarrier compensation rate. The ICA contains intercarrier  
9 compensation rates for some kinds of traffic, but non-local landline traffic is subject  
10 to different rates contained in AT&T’s switched access tariffs.

11 **Q. YOU SAID THAT LOCAL AND NON-LOCAL CALLS ARE DEFINED**  
12 **DIFFERENTLY FOR WIRELESS AND LANDLINE TRAFFIC. PLEASE**  
13 **ELABORATE.**

14 **A.** Whether a call is “local” (and thus subject to reciprocal compensation rates) or “non-  
15 local” (and thus subject to tariffed access charges) is determined based on different  
16 criteria for calls placed using a wireless device as opposed to calls placed using a  
17 landline telephone. Consistent with the FCC’s intercarrier compensation regulations,  
18 AT&T’s ICAs with wireless carriers (including Halo’s ICA with AT&T) provide that  
19 calls originated and terminated by end-users that are both physically located within  
20 the same MTA (Major Trading Area) (“IntraMTA” calls) are “local” calls and thus  
21 subject to reciprocal compensation rates. *See* ICA, Section I. D., definition for “Local  
22 Traffic.” An MTA, therefore, is analogous to a landline local calling area, but as  
23 explained below, it is typically much larger. Calls exchanged between end-users



1 located in different MTAs are “interMTA” calls and subject to tariffed interstate or  
2 intrastate switched access charges, which are higher.

3 Different criteria are used to determine whether landline traffic is “local” or “non-  
4 local” for purposes of intercarrier compensation. Landline traffic does not rely on  
5 MTA boundaries. Rather, landline traffic uses what I will refer to generally as “local  
6 calling areas.” Local calling area and MTA boundaries are vastly different in size  
7 (with MTAs being geographically much larger than local calling areas). There are  
8 only four MTAs that cover any geographic area in Florida (and only 51 in the nation),  
9 whereas there are 283 local calling areas in Florida alone.

10 **Q. IS THERE A SIGNIFICANT DIFFERENCE BETWEEN THE AMOUNTS**  
11 **HALO HAS BEEN PAYING TO AT&T TO TERMINATE HALO-**  
12 **DELIVERED TRAFFIC AND THE AMOUNT THAT HALO SHOULD BE**  
13 **PAYING?**

14 **A.** Yes. Because it claims that all of the traffic it sends to AT&T Florida is wireless and  
15 local (intraMTA), Halo has only been paying AT&T the reciprocal compensation rate  
16 on all of the Halo-delivered traffic that AT&T terminates. As demonstrated in Mr.  
17 Neinast’s testimony, however, much of the Halo-delivered traffic is actually  
18 interexchange landline traffic and is therefore subject to AT&T Florida’s tariffed  
19 access charges – not reciprocal compensation. Of course, Halo should not be sending  
20 AT&T any landline-originated traffic at all, but when it does send such traffic it  
21 obviously should be responsible for paying the applicable terminating access rate.

1 **Q. DOES HALO DENY THAT IT HAS BEEN SENDING AT&T TRAFFIC THAT**  
2 **BEGINS USING A LANDLINE VOICE SERVICE?**

3 A. No. Instead, Halo argues that even when calls actually begin as landline calls, they  
4 somehow “originate” again as wireless (and local) calls when they pass through  
5 Transcom before reaching Halo. More specifically, Halo contends that Transcom is  
6 an “Enhanced Service Provider,” or “ESP,” that ESPs are treated as “end users,” and  
7 that ESPs are deemed to originate (or re-originate) calls that pass through them.

8 **Q. HAS THE FCC ADDRESSED HALO’S ARGUMENT?**

9 A. Yes. The FCC rejected Halo’s argument about where Halo’s calls originate in its  
10 November, 2011 *Connect America Order*. Here is the FCC’s discussion, which I  
11 quote at length because of its importance:

12 1003. In the *Local Competition First Report and Order*, the  
13 Commission stated that calls between a LEC and a CMRS provider  
14 that originate and terminate within the same Major Trading Area  
15 (MTA) at the time that the call is initiated are subject to reciprocal  
16 compensation obligations under section 251(b)(5), rather than  
17 interstate or intrastate access charges. As noted above, this rule,  
18 referred to as the “intraMTA rule,” also governs the scope of traffic  
19 between LECs and CMRS providers that is subject to compensation  
20 under section 20.11(b). The *USF/ICC Transformation NPRM* sought  
21 comment, *inter alia*, on the proper interpretation of this rule.

22 1004. The record presents several issues regarding the scope and  
23 interpretation of the intraMTA rule. Because the changes we adopt in  
24 this Order maintain, during the transition, distinctions in the  
25 compensation available under the reciprocal compensation regime and  
26 compensation owed under the access regime, parties must continue to  
27 rely on the intraMTA rule to define the scope of LEC-CMRS traffic  
28 that falls under the reciprocal compensation regime. We therefore take  
29 this opportunity to remove any ambiguity regarding the interpretation  
30 of the intraMTA rule.

31 1005. We first address a dispute regarding the interpretation of the  
32 intraMTA rule. **Halo Wireless (Halo) asserts that it offers**

1           **“Common Carrier wireless exchange services to ESP and**  
2           **enterprise customers” in which the customer “connects wirelessly**  
3           **to Halo base stations in each MTA.”**<sup>19</sup> It further asserts that its “high  
4           volume” service is CMRS because “the customer connects to Halo's  
5           base station using wireless equipment which is capable of operation  
6           while in motion.” **Halo argues that, for purposes of applying the**  
7           **intraMTA rule, “[t]he origination point for Halo traffic is the base**  
8           **station to which Halo's customers connect wirelessly.”** On the  
9           other hand, ERTA claims that Halo's traffic is not from its own retail  
10          customers but is instead from a number of other LECs, CLECs, and  
11          CMRS providers. **NTCA further submitted an analysis of call**  
12          **records for calls received by some of its member rural LECs from**  
13          **Halo indicating that most of the calls either did not originate on a**  
14          **CMRS line or were not intraMTA, and that even if CMRS might**  
15          **be used “in the middle,” this does not affect the categorization of**  
16          **the call for intercarrier compensation purposes.** These parties thus  
17          assert that by characterizing access traffic as intraMTA reciprocal  
18          compensation traffic, Halo is failing to pay the requisite compensation  
19          to terminating rural LECs for a very large amount of traffic.  
20          Responding to this dispute, CTIA asserts that “it is unclear whether the  
21          intraMTA rules would even apply in that case.”

22           **1006. We clarify that a call is considered to be originated by a**  
23           **CMRS provider for purposes of the intraMTA rule only if the**  
24           **calling party initiating the call has done so through a CMRS**  
25           **provider.** Where a provider is merely providing a transiting service, it  
26           is well established that a transiting carrier is not considered the  
27           originating carrier for purposes of the reciprocal compensation rules.  
28           Thus, we agree with NECA that **the “re-origination” of a call over a**  
29           **wireless link in the middle of the call path does not convert a**  
30           **wireline-originated call into a CMRS-originated call for purposes**  
31           **of reciprocal compensation and we disagree with Halo’s contrary**  
32           **position.** (Emphasis added, footnotes omitted).

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<sup>19</sup> The FCC cited two Halo *ex parte* filings for this description, which make clear that the alleged ESP is Transcom. For reference, I attach Halo's two *ex partes* as Exhibit JSM-6 and Exhibit JSM-7.

1 **Q. BASED ON YOUR PARTICIPATION IN THE CASES LIKE THIS ONE**  
2 **INVOLVING AT&T ILECS AND HALO IN OTHER STATES, DOES HALO**  
3 **AGREE THAT THE FCC HAS REJECTED HALO'S THEORY THAT ALL**  
4 **CALLS ORIGINATE WITH TRANSCOM?**

5 A. Halo's position on the FCC's Order has been a moving target, as Halo has struggled  
6 to find some way to avoid the unavoidable fact that that Order deprives it of any  
7 defense against AT&T's claims. It appears, though, that Halo, after initially  
8 equivocating, now acknowledges that the FCC rejected its theory. For example,  
9 Halo's attorney asked the following questions at the hearing in the Wisconsin case on  
10 February 28, 2012:

11 Q: Now, you understand Halo took the position all along, even  
12 before the FCC order, based on our reading of the rules, we  
13 thought Transcom was the originating party. You understand  
14 we took that position, right?

15 A: I've read that.

16 Q. Okay. And the FCC disagreed on November 18th?

17 A. I've read that, too.<sup>20</sup>

18 At the same hearing, Halo's lawyer said this, while arguing a legal point:

19 Our contention is that it's originating with Halo, and I don't think no  
20 matter how many times you read those two paragraphs [in the FCC's  
21 Order], the FCC said it is not.<sup>21</sup>

22 Finally, one of the witnesses that Halo has been presenting in proceedings of this sort  
23 in other states has testified as follows in a recent version of his testimony, in Georgia:

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<sup>20</sup> See Exhibit JSM-8 (Transcript of February 28, 2012 hearing in Wisconsin Public Service Commission's Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc. (PSCW Docket No. 9594-TI-100), at 94-95 (emphasis added).

<sup>21</sup> *Id.* at 110.

1            “We acknowledge that the FCC . . . apparently now believes ESPs . . . do not  
2            originate calls.”<sup>22</sup> This is clearly an acknowledgement that the FCC has rejected  
3            Halo’s theory, because the only basis for Halo’s theory that Transcom originates the  
4            calls that Halo delivers to AT&T was Halo’s contention that Transcom is an ESP.

5

6            **Q.    IN PREVIOUS CASES, WHEN HALO TRIED TO ARGUE THAT THE FCC**  
7            **HAD NOT REJECTED ITS POSITION, WHAT WAS ITS ARGUMENT?**

8            A.    Halo claimed that the FCC did not understand that Halo was basing its position on the  
9            premise that Transcom is supposedly an ESP.

10           **Q.    IF HALO MAKES SUCH A CLAIM IN THIS CASE, HOW DO YOU**  
11           **RESPOND?**

12           A.    I will leave the debate about the legal interpretation of the FCC’s Order to the  
13           attorneys and legal briefs. In my layman’s opinion, however, the FCC clearly was  
14           aware of Halo’s and Transcom’s network arrangements and of Halo’s argument that  
15           all calls it sends to ILECs “originate” with Transcom even though they start with  
16           another carrier, and the FCC rejected Halo’s theory.

17           **Q.    PLEASE EXPLAIN.**

18           A.    In paragraph 1005 of the *Connect America Order* the FCC stated that “Halo Wireless  
19           (Halo) asserts that it offers ‘Common Carrier wireless exchange services to ESP and  
20           enterprise customers’ in which the customer ‘connects wirelessly to Halo base  
21           stations in each MTA.’ [fn. 2120]. . . . Halo argues that, for purposes of applying the  
22           intraMTA rule, ‘[t]he origination point for Halo traffic is the base station to which

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<sup>22</sup> Prefiled Direct Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. in Georgia Public Service Commission Docket No. 34219, at 31, lines 3-4.

1 Halo's customers [*i.e.*, the alleged ESP] connect wirelessly. [fn. 2122].” The only  
2 alleged ESP customer Halo has ever identified is Transcom. Moreover, these  
3 descriptions of Halo's argument quote directly from Halo's August 12, 2011 *ex parte*  
4 letter to the FCC, which the FCC cited in footnotes 2120 and 2122. I have attached  
5 that *ex parte* letter as Exhibit JSM-6. In that *ex parte* letter, Halo expressly argued  
6 that it has “[o]ne primary customer [*i.e.*, Transcom]” and that all of the traffic Halo  
7 sends to other carriers “originates from [that] customer.” Exhibit JSM-6 at 7. Halo  
8 also argued to the FCC that “[t]he customer [*i.e.*, Transcom] is originating calls to  
9 Halo” and that “[t]he origination point for Halo traffic is the base station to which  
10 Halo's customers [*i.e.*, Transcom] connect wirelessly.” *Id.* at 8-9. The FCC also  
11 relied on Halo's October 17, 2011 *ex parte* presentation to the FCC. *See* Exhibit  
12 JSM-7, cited in *Connect America Order*, ¶ 1005 n.2120. Halo was equally explicit in  
13 that letter, arguing that “Halo's ‘high volume’ customer [*i.e.*, Transcom] is an end  
14 user” and therefore “[e]very Halo-related call that the ILECs are terminating is  
15 originated by Transcom.” Exhibit JSM-7 at 2. Given Halo's clear statements in its *ex*  
16 *parte* presentations, and the FCC's reliance on those *ex partes*, the FCC was well  
17 aware of Halo's “ESP,” “end user,” and “origination” theories, and rejected them.  
18 The Tennessee Regulatory Authority also recognized this in its decision for AT&T  
19 Tennessee in a parallel case against Halo:

20 The Authority has reviewed Halo's *ex parte* filings with the FCC in  
21 the *Connect America Fund* docket, where the description of Halo's  
22 and Transcom's operations is the same as has been presented to the  
23 TRA in this proceeding. Indeed, reviewing the *ex parte* filings made  
24 by Halo makes it clear that the FCC was aware of Halo's assertion that  
25 it provided service to ESPs using wireless technology. In the resulting  
26 *Connect America Fund Order*, the FCC addressed and rejected Halo's

1                   assertion that the traffic from its customer Transcom is wirelessly  
2                   originated.

3                   Exhibit JSM-9 at 15.

4   **Q.   HALO HAS CONTENDED ELSEWHERE THAT THE FCC ACTUALLY**  
5   **DEEMED THE TRAFFIC THAT HALO PASSES ON TO ILECS TO BE NON-**  
6   **ACCESS TRAFFIC. DO YOU AGREE?**

7   A.   No. It is absolutely clear that in paragraphs 1005 and 1006 of the Order, which I  
8       quoted above, the FCC was saying that the traffic that Halo was claiming was non-  
9       access traffic was in reality access traffic. Indeed, that is the very point the FCC was  
10      making. Halo has argued that when the FCC used the term “transiting” in paragraph  
11      1006, it was using it in the same sense as when it later defined transit service, in an  
12      entirely separate part of the Order discussing an entirely different issue, as involving  
13      “non-access traffic.” Based on this, Halo contends that its traffic cannot be subject to  
14      access charges. Given how clear it is that the FCC was saying in paragraphs 1005  
15      and 1006 that the traffic at issue was access traffic, Halo’s suggestion that the FCC  
16      meant exactly the opposite based on something the FCC said in an entirely different  
17      part of the Order is absurd. Moreover, the primary issue in this case is whether the  
18      traffic Halo has been sending to AT&T Florida is landline-originated, and Halo’s  
19      argument about the term “transiting” has nothing to do with that point.

20   **V.   HALO’S LIABILITY FOR ACCESS CHARGES**

21   **Q.   WHAT IS THE BASIS FOR AT&T FLORIDA’S REQUEST THAT THE**  
22   **COMMISSION RULE THAT HALO MUST PAY AT&T FLORIDA ACCESS**  
23   **CHARGES?**

24   A.   As demonstrated above, Halo is sending AT&T Florida interexchange landline traffic  
25      on which Halo has been paying reciprocal compensation (as if the traffic were local)

1 rather than the higher access charges that apply to interexchange traffic. AT&T  
2 Florida is simply asking the Commission to rule that Halo owes access charges on the  
3 interexchange traffic that AT&T Florida has terminated for Halo (minus a credit for  
4 charges Halo has paid). AT&T Florida, however, is not asking the Commission to  
5 determine how much Halo owes – that task is for the bankruptcy court.

6 **Q. ARE THE ACCESS CHARGE RATES THAT HALO OWES SET FORTH IN**  
7 **THE PARTIES' INTERCONNECTION AGREEMENT?**

8 A. No, these are tariffed rates. AT&T Florida's federal tariff, filed with the FCC,  
9 requires Halo to pay access charges on the interstate traffic AT&T Florida has  
10 terminated for Halo, and AT&T Florida's state tariff, filed with this Commission,  
11 requires Halo to pay access charges on the intrastate non-local traffic AT&T Florida  
12 has terminated for Halo.

13 **Q. WHAT ARE THE PERTINENT PROVISIONS OF THE FEDERAL TARIFF?**

14 A. BellSouth Telecommunications Tariff F.C.C. No. 1, Sections 6.8.1 and 6.8.2.

15 **Q. WHAT ARE THE PERTINENT PROVISIONS OF THE STATE TARIFF?**

16 A. Bellsouth Telecommunications, Inc. Florida Access Services Tariff Sections E6.8.1,  
17 and E6.8.3.

18 **VI. HALO'S BREACH OF ICA BY SENDING INACCURATE CALL DETAIL**

19 **Q. IN ADDITION TO VIOLATING THE TERMS OF THE ICA BY SENDING**  
20 **LANDLINE TRAFFIC TO AT&T, HAS HALO BREACHED OTHER**  
21 **PROVISIONS OF THE ICA?**

22 A. Yes. Halo has violated the ICA by sending inaccurate call information.



1 **Q. IS HALO REQUIRED TO PROVIDE ACCURATE CALL DETAIL**  
2 **INFORMATION FOR THE TRAFFIC IT SENDS TO AT&T FLORIDA?**

3 A. Yes. Section XIV.G of the ICA states:

4 The parties will provide each other with the proper call information,  
5 including all proper translations for routing between networks and any  
6 information necessary for billing where BellSouth provides recording  
7 capabilities. This exchange of information is required to enable each  
8 party to bill properly.

9 This is an important provision. One of the major reasons carriers enter into ICAs is  
10 to provide the terms and conditions under which the parties will exchange traffic  
11 between their respective end users and to appropriately bill each other for that traffic.  
12 Call detail information is used for determining the appropriate intercarrier  
13 compensation due, and without proper call detail information, calls cannot be easily  
14 and accurately analyzed by billing systems.

15 **Q. HAS HALO FULFILLED ITS CONTRACTUAL OBLIGATION TO**  
16 **PROVIDE ACCURATE CALL DETAIL TO AT&T FLORIDA?**

17 A. No. As Mr. Neinast describes in his testimony, Halo has sent traffic to AT&T Florida  
18 that contained inaccurate call detail information, and thus breached the ICA.

19 **Q. HALO HAS ARGUED IN OTHER STATES THAT INSERTING AN**  
20 **INACCURATE CHARGE NUMBER MADE NO DIFFERENCE, BECAUSE**  
21 **THE ICA USES FACTORS TO DETERMINE THE PERCENTAGE OF HALO**  
22 **TRAFFIC THAT WILL BE BILLED AS LOCAL TRAFFIC VERSUS TOLL**  
23 **TRAFFIC. PLEASE RESPOND.**

24 A. The ICA does use factors to determine how much Halo traffic will be billed as local  
25 traffic versus toll traffic, but these factors *only* apply to *wireless* traffic. The ICA  
26 does not have any factor for landline traffic because the ICA does not allow Halo to  
27 send any landline traffic to AT&T Florida in the first place. As for wireless traffic,

1 while the ICA originally used a 1% factor to treat 1% of the traffic from Halo as  
2 interMTA (toll) traffic and the rest as local traffic, that was only a default factor “[f]or  
3 Carriers that have not exchanged traffic under a previous CMRS interconnection  
4 agreement with BellSouth or for traffic categories that are not technically feasible to  
5 measure.” ICA Section VII.E. The ICA provides that AT&T can unilaterally update  
6 the percentages for purposes of billing switched access if it is technically possible for  
7 AT&T to measure traffic for classification. AT&T has determined that the PLU  
8 (percent local usage factor) and the PIU (percent interstate usage factor) for the  
9 wireless traffic that Halo has been sending to AT&T are different than the default  
10 percentages. Accordingly, AT&T notified Halo that it intended to bill Halo using  
11 updated factors for wireless traffic in its May 13, 2011 Demand Letter to Halo. That  
12 letter communicated new factors to Halo for wireless traffic subject to switched  
13 access rates, based upon actual traffic data. As that letter explains, not only has Halo  
14 been improperly avoiding access charges on large amounts of unauthorized landline  
15 traffic, but it also has been sending significantly more interMTA wireless traffic than  
16 it told AT&T it would.

17 **VII. HALO’S BREACH OF ICA BY FAILING TO PAY FOR FACILITIES**

18 **Q. WHAT IS AT&T FLORIDA’S CLAIM CONCERNING FACILITIES**  
19 **CHARGES?**

20 A. Halo has purchased transport facilities from AT&T Florida, and AT&T Florida has  
21 provided those facilities pursuant to the terms of the ICA, but Halo has not paid  
22 AT&T Florida for those facilities.

1 **Q. WHAT FACILITIES ARE IN DISPUTE?**

2 A. Halo ordered – and AT&T Florida provisioned – DS3 and DS1 channelized facilities,  
3 multiplexing for those channels, cross-connects to connect facilities Halo leased from  
4 a third party to the facilities Halo ordered from AT&T, as well as channel  
5 terminations to six AT&T Florida switches. To be precise, Halo obtained both DS3  
6 and DS1 facilities at three locations (Gainesville, Orlando and Miami); and only DS1  
7 facilities in three locations (Daytona Beach, Panama City and Pensacola).

8 **Q. HOW MUCH DOES HALO OWE AT&T FLORIDA FOR THE FACILITIES**  
9 **IT OBTAINED FROM AT&T?**

10 A. Even though Halo has ordered these facilities from AT&T Florida and AT&T Florida  
11 provided them, Halo has refused to pay AT&T Florida's invoices for these facilities.  
12 As of January 31, 2012, AT&T had billed Halo \$452,216.89 for the use of these  
13 facilities and Halo had not paid any of that amount.

14 **Q. WHAT IS THE BASIS FOR AT&T FLORIDA'S CLAIM IN THE ICA?**

15 A. Under the ICA, the costs for wireless facilities are apportioned based upon the  
16 percentage of traffic each carrier is responsible for. In this case, AT&T Florida is  
17 responsible for the portion of traffic that originates with AT&T Florida end users and  
18 is destined for Halo, while Halo is responsible for the portion of traffic Halo sends to  
19 AT&T Florida for termination to AT&T Florida end users. Halo is also responsible  
20 for any intermediary (transit) traffic exchanged between third party carriers and Halo  
21 that is transported via these facilities. Section V.B. of the ICA addresses  
22 "Interconnection Trunk Group Options" for facilities and provides:

1 BellSouth and Carrier will share the cost of the two-way trunk group  
2 carrying both Parties traffic proportionally when purchased via this  
3 Agreement or the General Subscriber Services Tariff, Section A35, or,  
4 in the case of North Carolina, in the North Carolina Connection and  
5 Traffic Interchange Agreement effective June 30, 1994, as amended  
6 from time to time. BellSouth will bear the cost of the two-way trunk  
7 group for the proportion of the facility utilized for the delivery of  
8 BellSouth originated Local traffic to Carrier's POI within BellSouth's  
9 service territory and within the LATA (calculated based on the number  
10 of minutes of traffic identified as BellSouth's divided by the total  
11 minutes of use on the facility), and Carrier will provide or bear the cost  
12 of the two-way trunk group for all other traffic, including Intermediary  
13 traffic.

14 The apportioning of facilities costs applies for the entire facility between AT&T  
15 Florida's switch and Halo's switch.

16 **Q. IS THIS THE SAME WAY FACILITIES COSTS ARE APPORTIONED IN**  
17 **CLEC LANDLINE ICAS?**

18 A. No. In landline CLEC ICAs, each carrier is solely financially responsible for all of  
19 the facilities on its respective side of the Point of Interconnection ("POI"). For  
20 example, in an ICA between AT&T Florida and ABC CLEC, the parties would agree  
21 upon the location of a POI for purposes of interconnection, and each carrier would  
22 then provision its own facilities from its switch to that POI. The POI is the  
23 demarcation indicating the distinct networks of each carrier. Wireless  
24 interconnection, as I just discussed, does not apply this methodology, but instead  
25 provides that each carrier share the costs of the entire facility, based upon their  
26 respective usage of that facility.

1 Q. WITH RESPECT TO HALO'S INTERCONNECTION, WHAT IS THE  
2 PROPORTION OF THE FACILITY COSTS ASSIGNED TO HALO BASED  
3 UPON SECTION V.B. OF THE ICA?

4 A. Halo is responsible for 100% (or very close to 100%) of the facilities costs as AT&T  
5 Florida originates no (or very little) traffic destined to Halos' switch.<sup>23</sup> Nearly all of  
6 the traffic exchanged between Halo and AT&T Florida comes from Halo and is  
7 destined for termination by AT&T Florida or a third party carrier subtending AT&T  
8 Florida's tandem switch.

9 Q. GIVEN THAT HALO IS RESPONSIBLE FOR NEARLY 100% OF THE  
10 FACILITIES COSTS, DOES THE ICA PROVIDE FOR HOW HALO WILL  
11 BE BILLED FOR ANY PORTIONS OF THAT FACILITY THAT AT&T HAS  
12 PROVISIONED?

13 A. Yes. Section VI.B., "Compensation of Facilities," of the ICA provides how Halo is  
14 to be billed for the facilities it orders from AT&T Florida. Specifically, VI.B.2.b  
15 states:

16 BellSouth will bill Carrier for the entire cost of the facility. Carrier  
17 will then apply the BellSouth originated percent against the Local  
18 Traffic portion of the two-way interconnection facility charges billed  
19 by BellSouth to Carrier. Carrier will invoice BellSouth on a monthly  
20 basis, this proportionate cost for the facilities utilized by BellSouth.

21 Q. HALO CONTENDED IN ANOTHER PROCEEDING THAT IT PROVIDES  
22 ITS OWN INTERCONNECTION FACILITIES, OBTAINED FROM A THIRD  
23 PARTY, AND THAT HALO THEREFORE DOES NOT OWE FACILITIES  
24 CHARGES TO AT&T FLORIDA. DO YOU AGREE?

25 A. No, I do not. While it may very well be true that Halo has provisioned some of its  
26 own interconnection facilities leased from a third party, Halo's facilities do not

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<sup>23</sup> I say 100% or nearly 100% based upon recorded data for Halo's traffic. For example, the January 2012 usage data shows AT&T sent just 435 MOUs to Halo across the entire nine-state AT&T Southeast Region.

1 extend all the way to AT&T Florida's switches. The entirety of the interconnection  
2 facility is from Halo's switch to AT&T Florida's switch, and Halo's facility does not  
3 quite reach its destination. The charges in dispute are for the AT&T Florida-provided  
4 facilities that extend from the end of Halo's facility (for example, at a third party  
5 collocation cage where Halo's leased facility terminates) to AT&T Florida's switch  
6 ports. Though the facilities that AT&T Florida is providing to Halo may all be within  
7 the confines of a single building, they are necessary in order to connect Halo to  
8 AT&T Florida for the purposes of exchanging traffic.

9 **VIII. CONCLUSION AND BASIS FOR DISCONTINUATION OF SERVICE TO**  
10 **HALO**

11 **Q. HOW SHOULD THE COMMISSION RULE IN THIS PROCEEDING?**

12 A. The Commission should find that Halo has breached the parties' ICA by sending  
13 landline-originated traffic, by providing AT&T Florida incorrect call data, and by  
14 refusing to pay for interconnection facilities.

15 **Q. WHAT RELIEF IS AT&T FLORIDA SEEKING FROM THE COMMISSION**  
16 **FOR HALO'S BREACHES OF THE ICA?**

17 A. AT&T Florida is asking the Commission to:

18 (a) Find that Halo has materially breached the ICA by (1)  
19 sending landline-originated traffic to AT&T Florida, and (2) inserting  
20 incorrect Charge Number information on calls;

21 (b) Find that as a result of these breaches (or either of  
22 them), AT&T Florida is excused from further performance under the ICA  
23 and may stop accepting traffic from Halo;

1 (c) Find, without quantifying any specific amount due, that  
2 Halo is liable to AT&T Florida for access charges on the nonlocal landline  
3 traffic it has sent to AT&T Florida;

4 (d) Find, without quantifying any specific amount due, that  
5 Halo is liable for the cost of interconnection facilities it has obtained from  
6 AT&T Florida; and

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

8 **Q. WHY DO HALO'S BREACHES EXCUSE AT&T FLORIDA FROM**  
9 **FURTHER PERFORMANCE UNDER THE ICA?**

10 A. That is a legal question. I am informed by counsel, however, that under Florida law,  
11 a party to a contract is excused from performing its obligations under the contract if  
12 the other party materially breaches the contract. Counsel informs me that the  
13 authorities for this proposition of law include *Moritz v. Hoyt Enters., Inc.* 604 So. 2d  
14 807, 809 (Fla. 1992); *Scharlin v. Orange County*, 669 So. 2d 276 (Fla. App. 1996). I  
15 am not personally knowledgeable about the law in this area, but am providing this  
16 information so the Commission will know AT&T Florida's position.

17 **Q. IS THE BREACH HALO COMMITS WHEN IT SENDS AT&T FLORIDA**  
18 **LANDLINE-ORIGINATED TRAFFIC A MATERIAL BREACH?**

19 A. I do not know if the term "material" has a specific legal meaning. If it does, I cannot  
20 speak to that. I can say, however, that the requirement that Halo send AT&T only  
21 wireless-originated traffic goes to the very heart of the parties' agreement, as  
22 evidenced by the fact that the ICA was specifically amended when Halo entered it in  
23 order to make this requirement clear. This is a wireless agreement for a supposedly  
24 wireless provider, and that is absolutely central to the parties' arrangement. By

1 sending AT&T Florida landline-originated traffic, Halo was not violating some  
2 secondary or ancillary requirement; it was violating the very core of the agreed  
3 arrangement.

4 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

5 A. Yes.

6 1031296



**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Investigation into Practices of Halo Wireless, Inc. and Transcom  
Enhanced Services, Inc.

9594-TI-100

**HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S  
ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING**

**I. Introduction.**

During the November 23, 2011 prehearing conference, Halo Wireless, Inc. (“Halo”) and Transcom Enhanced Services, Inc. (“Transcom”) agreed that for so long as doing so would not constitute a waiver of their pending motions to dismiss, or any positions they have taken or will take in this matter, they would provide a position statement and supporting factual information under oath on Issues 1-8 as identified in the Notice of Proceeding. Administrative Law Judge Newmark also made clear that, by providing such a position statement, neither Halo nor Transcom would be precluded from providing additional information or arguments later in this proceeding. Before we proceed to a specific answer to the individual issues, however, Halo and Transcom will provide an explanation of their overall approach and positions.

Halo’s position is that it is providing commercial mobile radio service (“CMRS”)-based telephone exchange service (as defined in the Communications Act of 1934, as amended by the Communications Act of 1996 (the “Act”), 47 U.S.C. § 153(47)) to end user customers, and 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))<sup>1</sup> that is located in the same MTA as the terminating location. In other words, Halo contends that all of the traffic at issue is CMRS intraMTA traffic that is subject to section 251(b)(5) of the Act. None of the traffic is associated

<sup>1</sup> Stated another way, the mobile stations (*see* 47 U.S.C. § 153(28)) used by Halo’s end user customers – including Transcom – are not “telecommunications equipment” as defined in section 153(45) of the Act because the customers are not carriers. Halo has and uses telecommunications equipment, but its customers do not. They have CPE.

with a telephone toll service provided by or to Halo or Transcom, so “exchange access” charges cannot apply.

Section 153(48) defines “telephone toll service” as “telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.” For CMRS purposes, the “exchange” is the “Major Trading Areas” (“MTA”).<sup>2</sup> Halo is not providing service between stations in different exchange areas. Halo does not collect any additional or separate charge other than the charges for exchange service. Thus, Halo’s service is not telephone toll service. Instead, it is telephone exchange service. Exchange access charges cannot apply because only telephone toll is subject to exchange access. *See* 47 U.S.C. § 153(16); *see also* 47 C.F.R. § 69.5(b). The “intercarrier compensation” that applies is and must therefore be reciprocal compensation under section 251(b)(5), particularly since it has not been “carved out” by section 251(g). *See Core Mandamus Order*<sup>3</sup>; *see also Bell Atlantic*<sup>4</sup> and *Worldcom*.<sup>5</sup>

Transcom’s position is that it is an enhanced/information service provider (“ESP”). Transcom provides “enhanced service” as that term is defined in 47 C.F.R. § 64.702(a). Transcom’s services also meet the definition of “information service” as defined in the Act, 47 U.S.C. § 153(20). Transcom does not provide telecommunications (§ 153(43)), or any

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<sup>2</sup> *See* 47 C.F.R. §§ 51.701(b)(2) and § 24.202(a).

<sup>3</sup> Order on Remand and R&O and Order and FNPRM, *High Cost Universal Service Reform, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering, Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, 24 FCC Rcd 6475 (2008) (“*Core Mandamus Order*”) (subsequent history omitted).

<sup>4</sup> *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

<sup>5</sup> *Worldcom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

telecommunications service (§ 153(46)), and in particular, does not provide “telephone toll service” (§ 153(48)).

Four federal court decisions (the “ESP rulings”) directly construed and then decided Transcom’s regulatory classification and specifically held that Transcom (1) is not a carrier; (2) does not provide telephone toll service or any telecommunications service; (3) is an end user; (4) is not required to procure exchange access in order to obtain connectivity to the public switched telephone network (“PSTN”); and (5) may instead purchase telephone exchange service just like any other end user. True and correct copies of the ESP rulings are attached as **Exhibits 1-4**. Three of these decisions were reached after the so-called “IP-in-the-Middle” and “AT&T Calling Card” orders<sup>6</sup> and expressly took them into account.

While those federal court positions do not of course bind the non-AT&T incumbent local exchange carriers (“ILECs”)<sup>7</sup> or this Commission, Halo and Transcom submit that it was and is eminently reasonable for Halo and Transcom to rely on these decisions as the basis for their positions. No law has changed since they were issued. No court has held to the contrary. The Federal Communications Commission (“FCC”) has not held to the contrary. The Commission might choose to reach a different result (although Halo and Transcom firmly believe it should not, and in fact, cannot reach the issue), but any such decision could have only prospective effect.

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<sup>6</sup> See Order, *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) (“*AT&T Declaratory Ruling*” also known as “*IP-in-the-Middle*”); Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, FCC 05-41, 20 FCC Rcd 4826 (rel. Feb. 2005) (“*AT&T Calling Card Order*”).

<sup>7</sup> AT&T was a party to both of the federal court cases and is therefore bound by them. Halo and Transcom assert that AT&T is collaterally estopped from taking any position that is inconsistent with the result of those cases.

Halo and Transcom further assert that once one begins to look at Halo's services from the lens of a CMRS provider, supplying telephone exchange service to an end user via wireless CPE located in the same MTA as the terminating location, all of the arguments and accusations of the local exchange carrier ("LEC") antagonists are simply misplaced.

**II. Halo's Business Model.**

Halo's business model contemplates service to two classes of customers: (1) individual and enterprise end users in unserved or underserved rural locations ("consumer end users") and (2) high-volume end users ("High Volume end users"). Everyone in the telecommunications industry recognizes the financial challenges of delivering broadband to rural areas—the entire current discourse relating to universal service relates in substantial part to this issue. Major wireless carriers have substantial funds for investment and marketing, but absorption rates and rates of return in rural areas make such investments unattractive without subsidies. Halo's business model is designed to deliver 4G WiMAX broadband voice and data services to unserved and underserved rural areas without taxpayer dollars or subsidies. Halo's consumer offering is being marketed on an Internet model by which users are provided with "beta" products and services to instill trust and brand loyalty, and then charges will be applied as customers become entrenched. Currently, Halo has approximately fifty consumer customers, around the nation, none of which have yet been converted to a payment relationship because Halo has been overwhelmed with litigation and unable to devote sufficient time and resources to further develop this product. Meanwhile, the costs of operating, network development and marketing are supported by High-Volume traffic.

As a commercial mobile radio service, Halo lawfully can provide telephone exchange service to high-volume end users such as ESPs and enterprise customers. Currently, the only

such customer is Transcom, and traffic from Transcom provides 100 percent of Halo's current revenues because, again, Halo has been engulfed with litigation and has been unable to market and sign up additional customers in the High Volume market.

The primary concern mentioned by the Commission when initiating this current action was the reports from ILECs that some of the calls handled by Halo began on the PSTN elsewhere in the nation. There should be no surprise in this. The ESP rulings establish that Transcom is an ESP *even for calls that begin and end on the PSTN* because Transcom changes the content of every call that passes through its system, and Transcom offers enhanced capabilities.<sup>8</sup> The ESP rulings expressly make these facts clear. Clearly, the ILECs disagree with the ESP rulings, but the ESP rulings are very clear on these issues and Transcom and Halo

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<sup>8</sup> As noted, three of the four ESP rulings were decided after the "IP-in-the-Middle" order and the first AT&T Calling Card order. The court recognized that some of Transcom's traffic does start on the PSTN and also ends on the PSTN. The court, however, found that the FCC's test expressly requires more: there must also not be a change in content and no offer of enhanced service *and the provider must be a common carrier* in order for the service to be telephone toll and subject to access. *IP-in-the-Middle*, at 7547-7548 ("We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology. Our analysis in this order applies to services that meet these three criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport."); 7465 ("AT&T offers 'telecommunications' because it provides 'transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.' And its offering constitutes a 'telecommunications service' because it offers 'telecommunications for a fee directly to the public.' Users of AT&T's specific service obtain only voice transmission with no net protocol conversion, rather than information services such as access to stored files. More specifically, AT&T does not offer these customers a 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information;' therefore, its service is not an information service under section 153(20) of the Act. End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be 'internetworking' conversions, which the Commission has found to be telecommunications services. We clarify, therefore, that AT&T's specific service constitutes a telecommunications service." (notes omitted) *TDS et al.* conveniently ignore the additional required elements they do not like, particularly the fact that Transcom's service changes content and therefore cannot be "telecommunications" under the federal definition, and equally importantly that Transcom has never held out as a common carrier.

have a right to rely on the ESP rulings. Transcom therefore receives some<sup>9</sup> calls from its customers that began elsewhere on the PSTN. But it *does not matter*. Under *Bell Atlantic, Worldcom*, and a host of other precedent reaching back to Value Added Networks and Leaky PBXs, the ESP is an end user and thus is deemed to be a call “originator” for intercarrier compensation purposes.

TDS, *et al.*, deny Transcom’s status as an ESP and falsely accuse it of providing “IP-in-the-Middle” – even though the ESP Orders directly rejected AT&T’s similar argument – as a pretext for imposing exchange access charges on the subject traffic. This is how they can claim that Transcom is merely “re-originating” traffic and that the “true” end points for its calls are elsewhere on the PSTN. In making this argument, however, TDS, *et al.*, are advancing the exact position that the D.C. Circuit rejected in *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000). In that case, the D.C. Circuit held it did not matter that a call received by an ISP is instantaneously followed by the origination of a “further communication” that will then “continue to the ultimate destination” elsewhere. The Court held that “the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not ‘terminate’ at the ISP.” In other words, the D.C. Circuit clearly recognizes – and functionally held – that ESPs are an “origination” and “termination” endpoint for intercarrier compensation purposes (as opposed to *jurisdictional* purposes, which does use the “end-to-end” test).

The traffic here “terminates” with Transcom, and then Transcom “originates” a “further communication” in the MTA. In the same way that ISP-bound traffic *from* the PSTN is immune from access charges (because it is not “carved out by § 251(g) and is covered by § 251(b)(5)),

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<sup>9</sup> Transcom also has a very significant and growing amount of calls that originate from IP endpoints. Those are obviously not “IP-in-the-Middle” under even the test advanced by TDS *et al.*

the call to the PSTN is also immune.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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” (emphasis added). 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.

In other proceedings, the ILECs have pointed to certain language in ¶ 1066 of the FCC’s recent rulemaking that was directed at Halo, and the FCC’s discussion of “re-origination.” That language, however, necessarily assumes that Halo is serving a carrier, not an ESP. TDS told the

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<sup>10</sup> The incumbents incessantly assert that the ESP Exemption applies “only” for calls “from” an ESP customer “to” the ESP. This is flatly untrue. ESPs “may use incumbent LEC facilities to originate and terminate interstate calls[.]” See NPRM, *In the Matter of Access Charge Reform*, 11 FCC Rcd 21354, 21478 (FCC 1996). The FCC itself has consistently recognized that ESPs – as end users – “originate” traffic even when they received the call from some other end-point. That is the purpose of the FCC’s finding that ESPs’ systems operate much like traditional “leaky PBXs.”

<sup>11</sup> See, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket Nos. 96-262, 96-263, 94-1, 91-213, FCC 96-488, 11 FCC Rcd 21354, 21478, ¶ 284, n. 378 (rel. Dec. 24, 1996); Order, *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, FCC 88-151, 3 FCC Rcd 2631, 2632-2633. ¶13 (rel. April 27 1988); Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983).

<sup>12</sup> See, Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983) [discussing “leaky PBX and ESP resemblance”]; Second Supplemental NOI and PRM, *In the Matter of MTS and WATS Market Structure*, FCC 80-198, CC Docket No. 78-72, ¶ 63, 77 F.C.C.2d 224; 1980 FCC LEXIS 181 (rel. Apr. 1980) [discussing “leaky PBX”].

FCC that Transcom was a carrier, and the FCC obviously assumed – while expressly not ruling – that the situation was as TDS asserted. This is clear from the FCC’s characterization in the same paragraph of the Halo’s activities as a form of “transit.” “Transit” occurs when one carrier switches traffic *between two other carriers*. Indeed, that is precisely the definition the FCC provided in ¶ 1311 of the recent rulemaking.<sup>13</sup> Halo simply cannot be said to be providing “transit” when it has an *end user* as the customer on side and a carrier on the other side.

Halo agrees that a call handed off from a Halo *carrier customer* would not be deemed to originate on Halo’s network.<sup>14</sup> But Transcom is not a carrier, it is an ESP. The ESPs always have “originated further communications” but for compensation purposes (as opposed to jurisdictional purposes) the ESP is still an end-point and a call originator. Again, once one looks at this from an “end user” customer perspective the call classification result is obvious. The FCC and judicial case law is clear that an end user PBX “originates” a call even if the communication initially came in to the PBX from another location on the PSTN and then goes back out and terminates on the PSTN.<sup>15</sup>

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<sup>13</sup> “1311. Transit. Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier’s network. Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the Order, we adopt a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to section 251 of the Act; however, some state commissions and courts have addressed this issue.” (emphasis added)

<sup>14</sup> See § 252(d)(2)(A)(i), which imposes the “additional cost” mandate on “calls that originate on the network facilities of the other carrier.”

<sup>15</sup> See, e.g., *Chartways Technologies, Inc. v. AT&T*, 8 FCC Rcd 5601, 5604 (1993); *Directel Inc. v. American Tel. & Tel. Co.*, 11 F.C.C.R. 7554 (June 26, 1996); *Gerri Murphy Realty, Inc. v. AT&T*, 16 FCC Rcd 19134 (2001); *AT&T v. Intrend Ropes and Twines, Inc.*, 944 F.Supp. 701, 710 (C.D. Ill. 1996); *American Tel. & Tel. Co. v. Jiffy Lube Int’l, Inc.*, 813 F. Supp. 1164, 1165-1170 (D. Maryland 1993); *AT&T v. New York Human Resources Administration*, 833 F. Supp. 962 (S.D.N.Y. 1993); *AT&T, v. Community Health Group*, 931 F. Supp. 719, 723



So Halo has an end-user customer—Transcom. Although this end user customer receives calls from other places, for intercarrier compensation purposes the calls still originate on Halo's network. That customer connects wirelessly to Halo. Transcom "originates" communications "wirelessly" to Halo, and all such calls are terminated within the same MTA where Transcom originated them (the system is set up to make sure that all calls are "intraMTA").

Halo's High Volume service is based on a solid legal foundation. But the ILECs have asked the Commission to rule that Halo and Transcom are operating unlawfully in the State of Wisconsin. In other words, the ILECs are not merely asking the Commission to overrule the federal bankruptcy courts that issued Transcom's ESP rulings. The ILECs are asking the Commission to hold that Transcom and Halo have no right to rely on the ESP rulings, never had the right to rely on the ESP rulings, and are operating unlawfully in the state of Wisconsin because they are relying on the ESP rulings.

If Halo and Transcom have the right to rely on Transcom's ESP rulings, however, then there is nothing for the Commission to *investigate*. It may be that the ILECs want to *re-litigate* the ESP issue, but there is no reason for the taxpayers of Wisconsin to incur the cost of re-litigating those issues for the benefit of the ILECs. This is purely a private, commercial dispute. If Transcom is an ESP and an end user, then the traffic is subject to section 251(b)(5). ILECs are only entitled to reciprocal compensation (and then only after a proper request under 47 C.F.R. 20.11(e)).<sup>16</sup> The ILECs want to change the status quo such that Transcom will be considered a carrier (and therefore they can collect more money). More than that, they want this Commission

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(S.D. Cal. 1995); *AT&T Corp. v. Fleming & Berkley*, 1997 U.S. App. LEXIS 33674 \*6-\*16 (9th Cir. Cal. Nov. 25, 1997).

<sup>16</sup> If and when the new rules go into effect then the traffic will still be subject to § 251(b)(5). The only question will be whether it will be "bill and keep" under new § 51.713 or the kind of "non-access" defined by new § 51.701(b)(3) that requires "an arrangement in which each carrier receives intercarrier compensation for the transport and termination of Non-Access Telecommunications Traffic." See new § 51.701(e).

to rule that Transcom and Halo have been operating unlawfully from the beginning of Halo's operations—that Transcom and Halo never had the right to rely on Transcom's ESP rulings—so that the ILECs can recover access charges for all of Halo's past traffic.

Consider the ramifications of that request. National companies in regulated industries relying on federal rulings as to their classifications would be extending their operations into Wisconsin at their own peril if good faith reliance on such rulings would not immunize them from claims or charges that they are operating unlawfully. To rule as the ILECs wish would be a great disservice to the people of Wisconsin, not to mention a derogation of the rule of law.

### **III. Specific Responses to Issues.**

#### **1. What is the relationship of Halo Wireless, Inc. (Halo) and Transcom Enhanced Services, Inc. (Transcom)?**

##### *A. Corporate information for Halo Wireless, Inc.*

Halo Wireless, Inc. is a Texas corporation. The company was formed on February 7, 2005. The chart provided below lists Halo's officers, directors and shareholders.

<b>Halo Wireless, Inc. Officers, Directors and Stockholders</b>		
<b>Name</b>	<b>Title</b>	<b>Percentage of Stock Ownership</b>
Timothy Terrell	Equity Interest holder	40%
Gary Shapiro	Equity Interest holder	10%
Scott Birdwell	Equity Interest holder	50%
Carolyn Malone	Secretary / Treasurer	0%
Jeff Miller	Chief Financial Officer	0%
Russell Wiseman	President	0%

Halo was authorized to do business in Wisconsin on February 22, 2010. A copy of the Authorization is attached as **Exhibit 5**. Halo is also registered with the Commission and current on all obligations as of October 26, 2011, according to Gary Evenson of the Telecommunications Division.

*B. Corporate information for Transcom Enhanced Services, Inc.*

Transcom Enhanced Services, Inc. is a Texas corporation. The company was formed in 1999. The chart provided below lists Transcom's officers, directors and shareholders.

**Transcom Enhanced Services, Inc. Officers, Directors and Stockholders**

<b>Name</b>	<b>Title</b>	<b>Percentage of Stock Ownership</b>
RWH Group II, Ltd.	Equity Interest holder	12.8%
James O'Donnell	Equity Interest holder and Director	14.1%
Brooks Reed	Equity Interest holder	0.4%
Transcom Investors, LLC	Equity Interest holder	1.7%
First Capital Group of Texas III, LP	Equity Interest holder	35.1%
Rick Waghorne	Equity Interest holder	16.7%
Scott Birdwell	Chief Executive Officer and Chairman of Board of Directors	19.2%
Britt Birdwell	President and Chief Operating Officer	0%
Carolyn Malone	Secretary/Treasurer	0%
Jeff Miller	Chief Financial Officer	0%
Ben Hinterlong	Director	0%

Transcom's only activity in Wisconsin is that it operates wireless end user CPE proximate to the two base stations that support service delivery to an MTA with Wisconsin territory. There is at present only one base station that is physically located within Wisconsin. Transcom has no other physical presence in the state, does not market within the state, has no customers in the state and has no employees in the state.

*C. Services provided by Halo to Transcom and Consumers.*

Halo's web site, [www.halowireless.com](http://www.halowireless.com), provides an overview of Halo's offerings. Halo has two base stations that serve MTAs that include Wisconsin. These base stations support the basis for service delivery to Halo's customers. The chart on the next page provides the information for the two base stations.

<b>Base Station Location</b>	<b>Associated MTA</b>	<b>State(s) served</b>
Danville, IL	MTA 3 – Chicago	IL, IN, MI, WI
New Glarus, WI	MTA 20 – Milwaukee	WI

Halo's base stations are the wireless access points where it collects and delivers voice and data traffic from end-user customers who purchase wireless services from Halo. These wireless customers also purchase or lease wireless CPE (customer-owned or leased "stations") that when sufficiently proximate to a base station allow them to communicate wirelessly with that base station. The end user customer can then enjoy broadband Internet service. The consumer offering includes a Voice over Internet Protocol ("VoIP") client that allows the user to originate telecommunications within the MTA and to receive calls from the rest of the PSTN.

Under the Halo configuration, and with respect to voice services, only calls originated by Halo customers that are connected to a base station in an MTA and where the called numbers are also associated with a "rate center" within the same MTA, will be routed over AT&T interconnection trunks for transport and termination in the same MTA.<sup>17</sup> The Service Plan and underlying service architecture supporting the "High Volume" service provided to Transcom, for example, is designed so that any communication addressed to a different MTA would fail, *e.g.*, not complete.

Halo's consumer product supports broadband Internet access. There is a "voice" component that allows calls originated by Halo customers connecting to a base station within an MTA and destined to a called party in a different MTA to be completed. The consumer product also allows calls to and from Halo customers not accessing the Halo network at a base station access point (*e.g.*, customers accessing their voice services over another broadband Internet

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<sup>17</sup> The "High Volume" MSA with Transcom is explicit that the "service" purchased by Transcom is expressly designed so that it is wholly "intraMTA" in nature. This is how the "MTA Connect" and "LATA Connect" products are designed.

connection, much like other “over the top” VoIP products). These calls, however, *are not* routed over the AT&T interconnection trunks. Rather, those calls are handled by an interexchange carrier (“IXC”) that provides telephone toll service to Halo. That IXC provider pays all access charges that are due. In other words, when a LEC receives a Halo call for termination in an MTA that has traversed an interconnection arrangement, the call (a) will have been originated by an end user customer’s wireless equipment communicating with the base station in that same MTA, and (b) will, by design and default, be intraMTA as defined by the FCC’s rules and its decision that the originating point for CMRS traffic is the base station serving the CMRS customer.

Halo’s High Volume service offering has allowed for deployment of base stations in cities located in MTAs. Halo consciously chose to go to small towns underserved by incumbent operators for the deployment of these base stations. As a result, Halo can leverage common infrastructure to provide wireless broadband voice and data services on a scale and at a price other operators simply cannot because they must derive a return on investment from only one market, whereas Halo will be active in two markets. Halo’s detractors have claimed that Halo does not serve, and has no intention of serving, “retail” wireless customers. If this were true, it would make no sense to deploy base stations in rural locations. These sites are generally remote, hard to get to, and backhaul services are limited and expensive, to name just a few challenges.<sup>18</sup> If Halo had no intention of serving the people in these communities, Halo undoubtedly increased operational complexity and increased operating costs in a material way by deploying in rural, rather than more urban, locations.

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<sup>18</sup> New Glaurus, for example, has a population of about 2,500. The incumbent is Mount Vernon Telephone Company, a TDS subsidiary. The fact that Halo has entered TDS’ market and is attempting to compete not only for telephone exchange and exchange access service, but also to provide broadband, likely explains some of the animosity exhibited by TDS, in particular, in this matter.

2. **Are Halo and/or Transcom terminating traffic in Wisconsin that they are not paying compensation for? How many minutes per month is each terminating in Wisconsin?**

See response under Issue 3 below.

3. **Are there legal and legitimate reasons for Halo or Transcom to not pay compensation for terminating traffic in Wisconsin?**

*A. Clarification as to "Terminating."*

Issues 2 and 3 refer to Halo and/or Transcom "terminating" traffic. Thus, they technically refer to calls that originate on other carriers' networks in the MTA and are addressed to Halo for delivery to Halo's end user Transcom (or other end users such as those using Halo's consumer product). Halo has been assigned the following numbering resources with rate centers in Wisconsin.<sup>19</sup>

<b>Thousands Block</b>	<b>Rate Center</b>	<b>MTA</b>	<b>LATA</b>	<b>Date Assigned</b>
920-903-1	Appleton	20	350	2010-08-06
608-535-1	Madison	20	354	2010-08-06

Neither Halo nor Transcom are compensating any party for any call terminations performed by Halo in the past twelve months. Transcom is an end user, and thus does not "terminate" traffic. Under the FCC's rules and definitions, Halo is the terminating carrier because Halo's "end office switch, or equivalent facility" performs the class 5 switching function and then delivers the traffic to Halo's end user customer. Regardless, neither Halo nor Transcom are presently seeking compensation for any termination function related to calls inbound to Halo's network.

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<sup>19</sup> Halo also has numbering resources for MTA 3, which has some Wisconsin territory in it, but all of those resources are associated with rate centers in other states.

*B. Response to actual concern.*

Despite the reference to Halo and/or Transcom “terminating” traffic, it appears the concern actually pertains to traffic originated by Transcom on Halo’s network that is addressed to end users served by other Wisconsin LECs. At the prehearing conference conducted on November 23, 2011, Halo and Transcom were requested to provide data relating to the number of minutes that were sent to Wisconsin LECs for termination to their end users by month, by carrier for the last 12 months. AT&T requested that Transcom separately provide the number of minutes originated through other providers that were terminated in Wisconsin. The requested information is confidential, and is being provided under separate cover, in accordance with page 7, paragraph 7 of the Prehearing Conference Memorandum. Halo and Transcom note that they were able to gather the required information in time to do only one report (rather than initially producing aggregate information and then supplementing to show calls by terminating carrier), and are producing the call data by month by OCN, for the 12 months of November, 2010 through the end of October, 2011.

Issues 2 and 3 assume that no compensation was paid by either Halo or Transcom to any entity. This is not correct. First, Transcom does compensate the vendors that provide telephone exchange service and telephone toll service to Transcom.<sup>20</sup> Halo provides telephone exchange service to Transcom and has been compensated by Transcom. Part of the contract (whether explicit or implicit) between Transcom and each of its vendors is that the vendor is responsible for any applicable intercarrier compensation – whether in the form of reciprocal compensation or exchange access.

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<sup>20</sup> Transcom is an end user and is thus able to purchase telephone exchange service from LECs and CMRS providers as an end user. Nonetheless, Transcom does also purchase telephone toll service from IXCs as well.

The question is particularly incorrect with regard to AT&T. Halo has paid AT&T reciprocal compensation for all traffic that AT&T has terminated in Wisconsin. Halo has also paid AT&T for the transit function it provides for calls that go to other Wisconsin LECs.

As to whether LECs other than AT&T have been paid for terminating Halo's originating traffic, the answer is no. The legal and legitimate reason is that the other ILECs have not properly invoked the federal mechanism that is a legal prerequisite to any compensation obligation. If there is no interconnection agreement or request for an agreement, then "no compensation is owed for termination" until such proper request is made. In other words, every single one of the relevant rural local exchange carriers ("RLECs") could have begun receiving compensation at any time, and could begin receiving compensation tomorrow, if they would simply follow the required federal procedure.

As noted previously, under the current rules traffic that originates from a wireless end user's station in the same MTA as the terminating location is "non-access" traffic<sup>21</sup> and is subject to section 251(b)(5). Rule 20.11(d) prohibits LECs from imposing any tariff charges on non-access traffic. CMRS providers do not have any obligation to seek or obtain section 252

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<sup>21</sup> The FCC defined "non-access traffic" in *T-Mobile* note 6 as "traffic not subject to the interstate or intrastate access charge regimes, including traffic subject to section 251(b)(5) of the Act and ISP-bound traffic." Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Inter-carrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile*"). FCC rule 47 C.F.R. § 51.701(b)(2) provides that for CMRS-LEC purposes § 251(b)(5) applies to "Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in [47 C.F.R.] § 24.202(a) ...." The wireless CPE being used by both High Volume and consumer end users is IP-based. Thus it could also be characterized as "telecommunications traffic exchanged between a LEC and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format and that otherwise meets the definitions in paragraphs (b)(1) or (b)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment." The traffic originates and/or terminates in IP format because it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment. Therefore, the traffic will still be "non-access" when and if the FCC's new rules go into effect under new 51.701(b)(3). Further, despite all the protestations of the ILECs, the traffic does still meet the requirements in new 20.11(b), since – as shown above – it is "Non-Access Telecommunications Traffic, as defined in § 51.701 of this chapter."



agreements prior to initiating service. Further, the binding federal rule – as set out in *T-Mobile*<sup>22</sup> – is that in the absence of an interconnection agreement, “no compensation is owed for termination.” If an ILEC wants to be paid for terminating traffic on a prospective basis, the ILEC has the right to send a letter to the CMRS provider and “request interconnection.” The letter must also “invoke the negotiation and arbitration procedures contained in section 252 of the Act.” See 47 C.F.R. § 20.11(e). From and after the date of a proper request, the CMRS provider must pay reciprocal compensation to the ILEC using “the interim transport and termination pricing described in § 51.715.” Halo not only recognizes that it has this obligation, it has repeatedly corresponded with RLECs around the country specifically informing them of the simple request they need to make in order to receive compensation. RLECs in Wisconsin and elsewhere have refused to make the required request because they refuse to acknowledge that Transcom is an ESP and an end user. They want to assume that Transcom is a carrier and that access charges are owed. Transcom and Halo have the right to rely on Transcom’s ESP rulings, but the RLECs refuse to acknowledge that right.

**4. Is the traffic terminated by Halo or Transcom actually wireless traffic? If not, what type of traffic is it? What type of compensation should apply to this traffic?**

The traffic at issue all originates from a Halo end user via wireless CPE that is physically located in the same MTA as the terminating location. Thus, it is all subject to section 251(b)(5). As noted above, “[u]nder the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination.” *T-Mobile*, note 57.

Halo and Transcom believe that this responds to the Commission’s inquiry. The traffic is indeed “wireless,” and the compensation scheme has been described above. To the extent that

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<sup>22</sup> *T-Mobile* at Note 57 expressly provides that “Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination.”

the Commission was looking for any other information, Halo and Transcom stand ready to respond.

**5. Are Halo and Transcom taking actions to disguise the origin and type of traffic?**

Halo and Transcom assume that this issue is directed at signaling, since some of the LECs have incorrectly, and without basis, asserted that Halo and/or Transcom are engaging in some kind of impropriety with regard to SS7 signaling.

The short answer is no. Neither Transcom nor Halo change the content or in any way “manipulate” the address signal information that is ultimately populated in the SS7 ISUP IAM Called Party Number (“CPN”) parameter. Halo populates the Charge Number (“CN”) parameter with the Billing Telephone Number of its end user customer Transcom. The LECs allege improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from their assertion that Transcom is a carrier rather than an end user. Again, they are arguing that Transcom and Halo do not have the right to rely on Transcom’s ESP rulings.

Halo’s network is IP-based, and the network communicates internally and with customers using a combination of WiMAX and SIP. To interoperate with the SS7 world, Halo must conduct a protocol conversion from IP to SS7 and then transmit call control information using SS7 methods. The ILECs’ allegations fail to appreciate this fact, and are otherwise technically incoherent. They reflect a distinct misunderstanding of technology, SS7, the current market, and most important, a purposeful refusal to consider this issue through the lens of CMRS telephone exchange service provided to an end user.

From a technical perspective, “industry standard” in the United States is American National Standards Institute (“ANSI”) T1.113, which sets out the semantics and syntax for SS7-

based CPN and CN parameters. The “global” standard is contained in ITU-T series Q.760-Q.769. ANSI T1.113 describes the CPN and CN parameters:

**Calling Party Number.** Information sent in the forward direction to identify the calling party and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, address presentation restriction indicator, screening indicator, and address signals.

**Charge Number.** Information sent in either direction indicating the chargeable number for the call and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, and address signals.

The various indicators and the address signals have one or more character positions within the parameter and the standards prescribe specific syntax and semantics guidelines. The situation is essentially the same for both parameters, although CN can be passed in either direction, whereas CPN is passed only in the forward direction. The CPN and CN parameters were created to serve discrete purposes and they convey different meanings consistent with the design purpose. For example, CPN was created largely to make “Caller ID” and other CLASS-based services work. Automatic Number Identification (“ANI”) and CN, on the other hand, are pertinent to billing and routing.

*A. SS7 ISUP IAM Calling Party Number Parameter Content.*

Halo’s signaling practices on the SS7 network comply with the ANSI standard with regard to the address signal content. Halo’s practices are also consistent with the Internet Engineering Task Force (“IETF”) “standards” for Session Initiated Protocol (“SIP”) and SIP to Integrated Services Digital Network (“ISDN”) User Part (“ISUP”) mapping. Halo populates the SS7 ISUP IAM CPN parameter with the address signal information that Halo has received from its High Volume customer (Transcom). Specifically, Halo’s practices are consistent with the IETF Request for Comments (“RFCs”) relating to mapping of SIP headers to ISUP parameters. *See, e.g., G. Camarillo, A. B. Roach, J. Peterson, L. Ong, RFC 3398, Integrated Services Digital*

*Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping*, © The Internet Society (2002), available at <http://tools.ietf.org/html/rfc3398>.

When a SIP INVITE arrives at a PSTN gateway, the gateway SHOULD attempt to make use of encapsulated ISUP (see [3]), if any, within the INVITE to assist in the formulation of outbound PSTN signaling, but SHOULD also heed the security considerations in Section 15. If possible, the gateway SHOULD reuse the values of each of the ISUP parameters of the encapsulated IAM as it formulates an IAM that it will send across its PSTN interface. In some cases, the gateway will be unable to make use of that ISUP - for example, if the gateway cannot understand the ISUP variant and must therefore ignore the encapsulated body. Even when there is comprehensible encapsulated ISUP, the relevant values of SIP header fields MUST 'overwrite' through the process of translation the parameter values that would have been set based on encapsulated ISUP. In other words, the updates to the critical session context parameters that are created in the SIP network take precedence, in ISUP-SIP-ISUP bridging cases, over the encapsulated ISUP. This allows many basic services, including various sorts of call forwarding and redirection, to be implemented in the SIP network.

For example, if an INVITE arrives at a gateway with an encapsulated IAM with a CPN field indicating the telephone number +12025332699, but the Request-URI of the INVITE indicates 'tel:+15105550110', the gateway MUST use the telephone number in the Request-URI, rather than the one in the encapsulated IAM, when creating the IAM that the gateway will send to the PSTN. Further details of how SIP header fields are translated into ISUP parameters follow.

*B. SS7 ISUP IAM Charge Number Parameter Content.*

Halo's high volume customer will sometimes pass information that belongs in the CPN parameter that does not correctly convey that the Halo end user customer is originating a call in the MTA. When this is the case, Halo still populates the CPN, including the address signal field with the original information supplied by the end user customer. Halo, however, also populates the CN parameter. The number appearing in the CN address signal field will usually be one assigned to Halo's customer and is the Billing Account Number, or its equivalent, for the service provided in the MTA where the call is processed. In ANSI terms, that is the "chargeable number." This practice is also consistent with the developing IETF consensus and practices and

capabilities that have been independently implemented by many equipment vendors in advance of actual IETF “standards.”

SIP “standards” do not actually contain a formal header for “Charge Number.” Vendors and providers began to include an “unregistered” “private” header around 2005. The IETF has been working on a “registered” header for this information since 2008. See D. York and T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-01) © The IETF Trust (2008), available at <http://tools.ietf.org/html/draft-york-sipping-p-charge-info-01> (describing “‘P-Charge-Info’, a private Session Initiation Protocol (SIP) header (P-header) used by a number of equipment vendors and carriers to convey simple billing information.”). The most recent draft was released in September, 2011. See D. York, T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-12), © 2011 IETF Trust, available at <http://www.ietf.org/id/draft-york-sipping-p-charge-info-12.txt>. Halo’s practices related to populating the Halo-supplied BTN for Transcom in the SS7 ISUP IAM CN parameter are quite consistent with the purposes for and results intended by each of the “Use Cases” described in the most recent document.

Halo notes that, with regard to its consumer product, Halo will signal the Halo number that has been assigned to the end user customer’s wireless CPE in the CPN parameter. There is no need to populate the CN parameter, unless and to the extent the Halo end user has turned on call forwarding functionality. In that situation, the Halo end user’s number will appear in the CN parameter and the E.164 address of the party that called the Halo customer and whose call has been forwarded to a different end-point will appear in the CPN parameter. Once again, this is

perfectly consistent with both ANSI and IETF practices for SIP and SS7 call control signaling and mapping.

Halo is not taking any action to “disguise” anything. Instead, Halo is exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end user, and in particular a communications-intensive business end user with sophisticated CPE.

Transcom, as noted, also has an IP-based system. Nonetheless, Transcom has had a firm policy since at least 2003 that it will not in any way change or manipulate the information that belongs in the SS7 ISUP IAM CPN parameter address signal. Transcom has always and will always maintain the address signal content and pass it on unchanged, albeit after the protocol conversion from IP to SS7 where necessary, which would be the case when Transcom and its PSTN vendor connect via “TDM” instead of on an IP basis. As noted, however, Transcom and Halo communicate via IP.

**6. Do Halo’s actions conflict with the terms of its ICA with Wisconsin Bell, Inc., d/b/a AT&T Wisconsin?**

*A. Jurisdiction.*

Halo has an interconnection agreement (“ICA”) with Wisconsin Bell, Inc. d/b/a AT&T Wisconsin (“AT&T Wisconsin”). *If* there is a dispute between Halo and AT&T and *if* one or the other files a “post-ICA” dispute case and *if* the Commission has jurisdiction to resolve the dispute, then presumably it will do so. But, the Commission lacks any authority to take up the question of a breach and make a “determination” on that issue as part of a Commission-initiated inquiry, such as this case. The Commission most certainly cannot look at the ICA and “find” some duty to other LECs that runs to their benefit, since the ICA has an express provision (GTC § 28) stating that “[t]his Agreement shall not provide any person not a Party to this Agreement

with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing without reference to this Agreement.”

Post-ICA disputes are handled under section 252 of the Act. Traditionally, these are bilateral cases, and only the parties to the contract (here AT&T Wisconsin and Halo) are permitted to participate. The Commission did not specifically list section 252 as one of the bases for its jurisdiction in this matter, and Halo submits that was correct since neither Halo nor AT&T has invoked dispute resolution under section 252, which is a necessary prerequisite. And, the legislature has expressly stated that the Commission’s authority to resolve ICA disputes does not extend to ICAs to which a CMRS provider is a party. Wis. Stat. sec. 196.199 (1). Regardless, and without any waiver of the foregoing, Halo submits that there has been no breach and Halo’s “actions” are fully consistent with the ICA terms.

*B. Substance.*

Any allegation of breach is purely based upon the LECs’ desire to disregard Transcom’s ESP rulings. AT&T has alleged in other jurisdictions that Halo has breached the relevant ICA because the traffic Halo is sending “is not wireless.” This allegation is based wholly on the assertion that the traffic in question began elsewhere on the PSTN. In other words, the allegation of breach assumes that Transcom is a carrier, not an end user. If Transcom is an end user (as its ESP rulings establish), then the traffic is wireless and there has been no breach.

**7. Is Halo or Transcom operating or providing services in Wisconsin without proper certification from the Commission? Are Halo and Transcom operating or providing services, jointly or in concert, in Wisconsin without proper certification from the Commission?**

Transcom is not a carrier and does not provide any telecommunications service in Wisconsin. Instead, Transcom is an ESP. The FCC preempted states from imposing common

carrier regulation on non-common carrier ESPs long ago and the 1996 amendments extended this preemption to all enhanced/information services.<sup>23</sup>

Section 332(c)(3) of the Act expressly preempts state regulation of CMRS entry or rates. Equally important, Wisconsin law does not support the proposition that a CMRS provider or an ESP must secure a state certification, in any event. CMRS is specifically exempted from certification. Wis. Stat. § 196.202 (2). ESPs do not provide telecommunications, and only telecommunications providers are potentially subject to certification requirements under state law. Finally, and with specific regard to Transcom (as opposed to Halo), Transcom is not providing any service to any Wisconsin customers. While it is true that Transcom originates calls that terminate in Wisconsin, Transcom does not have a customer in Wisconsin. Thus, it simply cannot be said that Transcom provides service “in” Wisconsin, or provides any intrastate service. The answer is therefore no. No certificate is required under Wisconsin law, and even if Wisconsin law purported to require such a certification (which it does not), any state requirement has been preempted by federal law under the doctrines of express, field and conflict preemption.

Halo is operating as a CMRS carrier in Wisconsin. Pursuant to Wis. Stat. § 196.01(5)(b)(4), a CMRS carrier is not a “public utility” in Wisconsin and no certification is required.

The only way that certification could be required of either Transcom or Halo is if the Commission were to rule that neither Transcom nor Halo has the right to rely on Transcom’s

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<sup>23</sup> See *California v. FCC*, 905 F.2d 1217, 1240 (9th Cir. 1990) [rejecting FCC’s initial attempt to preempt state regulation of common carrier provided intrastate enhanced services but affirming preemption as to “non-common carriers such as IBM”]; Memorandum Opinion and Order, *In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, FCC 04-27, ¶ 13, 19 FCC Rcd 3307 (rel. Feb. 2004); *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, 290 F. Supp. 2d 993 (D. Minn. 2003).



ESP rulings. That is what the LECs are asking the Commission to do. Halo and Transcom respectfully suggest the Commission should decline their invitation.

**8. What remedial actions, if any, should be ordered by the Commission in light of its findings or determinations with respect to Issue Nos. 1-7 above? Possible actions may include, but are not limited to, the following:**

- **Rescission or enforcement of the Commission's approval of the AT&T-Halo interconnection agreement under Wis. Stat. § 196.04 and 47 U.S.C. §§ 251 and 252.**
- **Injunction against Halo and/or Transcom operations that violate state provider certification requirements.**
- **Order under Wis. Stat. § 196.219(3)(m) to incumbent providers to terminate services or connections that facilitate the unauthorized provisioning of services.**
- **Any other injunctive order respecting the propriety of the services provided by Halo and/or Transcom.**

Based on the analysis set forth above, both Halo and Transcom respectfully argue that any remedial actions ordered by the Commission would be improper and unlawful. Halo and Transcom also reserve the right to further respond on this issue after any LEC proposes or seeks any specific relief.

Respectfully submitted,

/s/ Steven H. Thomas (12/02/11)

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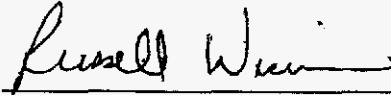
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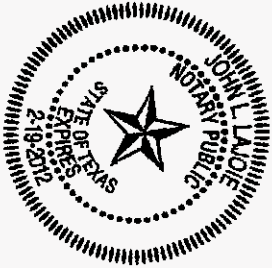
**VERIFICATION OF HALO WIRELESS, INC.**

My name is Russell Wiseman. I am President of Halo Wireless, Inc. ("Halo"). My business address is 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220. I am familiar with the business records of Halo. Further, to the best of the company's knowledge, the information provided herein is true and correct.



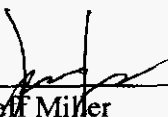
\_\_\_\_\_  
Russell Wiseman  
President, Halo Wireless, Inc.

SUBSCRIBED and SWORN to before me by Russell Wiseman, this 2 day of December, 2011.

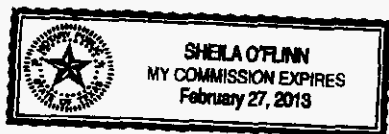
  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**VERIFICATION OF TRANSCOM ENHANCED SERVICES, INC.**

My name is Jeff Miller. I am Chief Financial Officer of Transcom Enhanced Services, Inc. ("Transcom"). My business address is 307 West 7th Street, Suite 1600, Fort Worth, Texas 76102. I am familiar with the business records of Transcom. Further, to the best of the company's knowledge, the information provided herein is true and correct.

  
\_\_\_\_\_  
Jeff Miller  
Chief Financial Officer, Transcom Enhanced Services, Inc.

SUBSCRIBED and SWORN to before me by Jeff Miller, this 2 day of December, 2011.



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

# EXHIBIT 1

TO  
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S  
ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET



**The following constitutes the order of the Court.**

**Signed May 16, 2006**

*Harlin DeWayne Hale*  
**United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:**

**TRANSCOM ENHANCED  
SERVICES, LLC,**

**DEBTOR.**

§  
§  
§  
§  
§  
§

**CASE NO. 05-31929-HDH-11**

**CHAPTER 11**

**CONFIRMATION HEARING:  
MAY 16, 2006 @ 10:00 a.m.**

**ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S  
ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED**

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the Order Confirming Plan - Page 1

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

**Findings of Fact**

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the



"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

#### **Conclusions of Law**

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

- a. the Plan complies with all applicable provisions of the Bankruptcy Code;
- b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;
- c. the Plan has been proposed in good faith and not by any means forbidden by law;
- d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;
- e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;
- f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;
- g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;
- h. the Plan does not unfairly discriminate against dissenting classes;
- i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;
- j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;
- k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

- l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;
- m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;
- n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

**\*\*\* END OF ORDER \*\*\***

PREPARED BY:

By /s/ David L. Woods (5.16.06)  
J. Mark Chevallier  
State Bar No. 04189170  
David L. Woods  
State Bar No. 24004167  
MCGUIRE, CRADDOCK & STROTHER, P.C.  
ATTORNEYS FOR DEBTOR and  
DEBTOR-IN-POSSESSION



# EXHIBIT 2

TO  
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S  
ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING



<b>GLOBAL CROSSING BANDWIDTH,</b>	§
<b>INC. and GLOBAL CROSSING</b>	§
<b>TELECOMMUNICATIONS, INC.,</b>	§
	§
<b>Third Party Plaintiffs,</b>	§
	§
<b>v.</b>	§
	§
<b>TRANSCOM ENHANCED SERVICES,</b>	§
<b>LLC and TRANSCOM</b>	§
<b>COMMUNICATIONS, INC.,</b>	§
	§
<b>Third Party Defendants.</b>	§
	§

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**ORDER GRANTING TRANSCOM’S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER**

On this date, came on for consideration the Motion For Partial Summary Judgment On Counterplaintiffs’ Sole Remaining Counterclaim Based On The Affirmative Defense That Transcom Qualifies As An Enhanced Service Provider (the “Motion”) filed by Transcom Enhanced Services, Inc. (“Transcom” or “Counterdefendant”), in which Transcom seeks summary judgment on the sole remaining counterclaim (the “Counterclaim”) asserted by Counterplaintiffs’ Global Crossing Bandwidth, Inc. (“GX Bandwidth”) and Global Crossing Telecommunications, Inc. (“GX Telecommunications”) (collectively, “GX Entities” or “Counterplaintiffs”) based on the affirmative defense that Transcom qualifies as an enhanced service provider.

Twice previously, this Court has ruled that Transcom qualifies as an enhanced service provider, and therefore is not obligated to pay access charges, but rather must pay end user charges. In filing the motion, Transcom relied heavily on the evidence previously presented to this Court in contested hearings (the “ESP Hearings”) involving the SBC Telcos (collectively, “SBC”) and AT&T

Corp. (“AT&T”) along with Affidavits from a principal of Transcom and one of Transcom’s expert witnesses establishing that Transcom’s system has not changed since the time of the ESP Hearings, that the services provided to the GX Entities by Transcom are the same as the services provided to all other Transcom customers, and that Transcom’s expert witness is still of the opinion that Transcom’s business operations fall within the definitions of “enhanced service provider” and “information service.”

In response to the Motion, Counterplaintiffs have asserted that they neither oppose nor consent to the relief sought in the Motion. In their responses to Transcom’s interrogatories, however, Counterplaintiffs asserted that Transcom did not qualify as an enhanced service provider because its service is merely an “IP-in-the-middle” service, which Transcom asserts is a reference to the FCC’s Order, *In The Matter Of Petition For Declaratory Ruling That AT&T’s Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, 19 FCC Rcd 7457, Release Number FCC 04-97, released April 21, 2004 (the “AT&T Order”).

During the ESP Hearings, a number of witnesses testified on the issue of whether Transcom is an enhanced service provider and therefore exempt from payment of access charges. The transcripts and exhibits from those hearings have been introduced as summary judgment evidence in support of the Motion. That record establishes by a preponderance of the evidence that the service provided by Transcom is distinguishable from AT&T’s specific service (as described in the AT&T Order) in a number of material ways, including, but not limited to, the following:

- (a) Transcom is not an interexchange (long distance) carrier.
- (b) Transcom does not hold itself out as a long distance carrier.
- (c) Transcom has no retail long distance customers.

- (d) The efficiencies of Transcom's network result in reduced rates for its customers.
- (e) Transcom's system provides its customers with enhanced capabilities.
- (f) Transcom's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court therefore holds again, as it did at the conclusion of the ESP hearings, that the AT&T Order does not control the determination of whether Transcom qualifies as an enhanced service provider.

The term "enhanced service" is defined at 47 C.F.R. § 67.702(a) as follows:

For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

**ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT  
TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER**

The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, *without change in the form or content* of the information as sent and received. (emphasis added).

The term “telecommunications service” means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of “telecommunications” and therefore would not constitute a “telecommunications service.”

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

(a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier’s carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services*. (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the summary judgment evidence, the Court finds that Transcom’s system fits squarely within the definitions of “enhanced service” and “information service,” as defined above. Moreover, the Court finds that Transcom’s system falls outside of the definition of “telecommunications service” because Transcom’s system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not

necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Transcom's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to Transcom, that DataVoN provided "enhanced information services." *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. Transcom now uses DataVoN's assets in its business.

In the Counterclaim, paragraph 94 makes the following assertion:

Under the Communications Agreement, the Debtor asserted that it was an enhanced service provider. Not only did the Debtor make this assertion, it agreed to indemnify GX Telecommunications in the event that assertion proved untrue.

The Counterclaim goes on to allege that Transcom failed to pay access charges, and that Transcom is therefore liable under the indemnification provision in the governing agreement to the extent that it does not qualify as an enhanced service provider. In response to the Counterclaim, Transcom asserted the affirmative defense that it does indeed qualify as an enhanced service provider, and therefore has no liability under the indemnification provision. The Motion seeks summary judgment on that specific affirmative defense.

The Court has previously ruled, and rules again today, that Transcom qualifies as an enhanced service provider. As such, it is the opinion of the Court that the Motion should be granted.

It is therefore ORDERED that the Motion is GRANTED, and Transcom is awarded summary judgment that the GX Entities take nothing by their Counterclaim.

###END OF ORDER###

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**ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT  
TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER**

**PAGE 7**



# EXHIBIT 3

TO  
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S  
ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

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(Cite as: 427 B.R. 585)

C

United States Bankruptcy Court,  
N.D. Texas,  
Dallas Division.  
In re TRANSCOM ENHANCED SERVICES, LLC,  
Debtor.

No. 05-31929-HDH-11.  
April 29, 2005.

**Background:** Bankrupt telecommunications provider that had filed for Chapter 11 relief moved for leave to assume master agreement between itself and telephone company.

**Holdings:** The Bankruptcy Court, Harlin D. Hale, J., held that:

(1) bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, and  
(2) debtor fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment.

So ordered.

West Headnotes

**[1] Bankruptcy 51 ↩️2048.2**

**51 Bankruptcy**  
**511 In General**  
**511(C) Jurisdiction**  
**51k2048 Actions or Proceedings by Trustee or Debtor**  
**51k2048.2 k. Core or related proceedings. Most Cited Cases**

Bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, where debtor's status as ESP bore directly upon whether it could satisfy terms of master agreement and whether its decision to assume this agreement was proper exercise of its business judgment; forum selection clause in master agreement, while it might have validity in other contexts and require that any litigation over debtor's status as ESP take place in New York, did not deprive court of jurisdiction to decide issue bearing directly on propriety of allowing debtor to assume master agreement. 11 U.S.C.A. § 365.

**[2] Bankruptcy 51 ↩️3111**

**51 Bankruptcy**  
**51IX Administration**  
**51IX(C) Debtor's Contracts and Leases**  
**51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment**  
**51k3111 k. "Business judgment" test in general. Most Cited Cases**

In deciding whether to grant debtor's motion to assume executory contract, bankruptcy court must ascertain whether or not debtor is exercising proper business judgment. 11 U.S.C.A. § 365.

**[3] Bankruptcy 51 ↩️3111**

**51 Bankruptcy**  
**51IX Administration**  
**51IX(C) Debtor's Contracts and Leases**  
**51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment**  
**51k3111 k. "Business judgment" test in general. Most Cited Cases**

**Telecommunications 372 ↩️866**

**372 Telecommunications**

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372III Telephones  
372III(F) Telephone Service  
372k854 Competition, Agreements and  
Connections Between Companies  
372k866 k. Pricing, rates and access  
charges. Most Cited Cases

Bankrupt telecommunications provider whose communications system resulted in non-trivial changes to user-supplied information for every communication processed fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment. 11 U.S.C.A. § 365; Communications Act of 1934, § 3 (43, 46), 47 U.S.C.A. § 153(43, 46); 47 C.F.R. § 64.702(a), 69.5.

**\*585 MEMORANDUM OPINION**

HARLIN D. HALE, Bankruptcy Judge.

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT & T \*586 Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").<sup>EN1</sup> At the hearing, the Debtor, AT & T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

FN1. Debtor's Exhibit 1, admitted during the hearing, is a true, correct and complete copy of the Master Agreement between Debtor and AT & T.

**I. Background Facts**

This case was commenced by the filing of a voluntary Bankruptcy Petition for relief under Chapter 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale provider of transmission services providing its customers an Internet Protocol

("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

In 2002, a company called DataVoN, Inc. invested in technology from Veraz Networks designed to modify the aural signal of telephone calls and thereby make available a wide variety of potential new services to consumers in the area of VoIP. The FCC had long supported such new technologies, and the opportunity to change the form and content of the telephone calls made it possible for DataVoN to take advantage of the FCC's exemption provided for Enhanced Service Providers ("ESP's"), significantly reducing DataVoN's cost of telecommunications service.

On September 20, 2002, DataVoN and its affiliated companies filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, before Judge Steven A. Felsenthal. Southwestern Bell was a claimant in the DataVoN bankruptcy case. On May 19, 2003, the Debtor was formed for purposes of acquiring the operating assets of DataVoN. The Debtor was the winning bidder for the assets of DataVoN and on May 28, 2003, the bankruptcy court approved the sale of substantially all of the assets of DataVoN to the Debtor. Included in the order approving the sale, were findings by Judge Felsenthal that DataVoN provided "enhanced information services".

On July 11, 2003, AT & T and the Debtor entered into the AT & T Master Agreement MA Reference No. 120783 (the "Master Agreement"). In an addendum to the Master Agreement, executed on the same date, the Debtor states that it is an "enhanced information services" provider, providing data communications services over private IP networks (VoIP), such VoIP services are exempt from the access charges applicable to circuit switched interexchange calls, and such services would be provided over end user local services (such as the SBC Telcos).

AT & T is both a local-exchange carrier and a long-distance carrier of voice and data. The SBC Telcos are local exchange carriers that both originate and terminate long distance voice calls for carriers that do not have their own direct, "last mile" connections to end users. For this service, SBC Telcos charge an access charge. Enhanced service providers ("ESP's")

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are exempt from paying these access charges, and the SBC Telcos had been in litigation \*587 with DataVoN during its bankruptcy, and has recently been in litigation with the Debtor, AT & T and others over whether certain services they provide are entitled to this exemption to access charges.

On April 21, 2004, the FCC released an order in a declaratory proceeding between AT & T and SBC (the "AT & T Order") that found that a certain type of telephone service provided by AT & T using IP technology was not an enhanced service and was therefore not exempt from the payment of access charges. Based on the AT & T Order, before the instant bankruptcy case was filed, AT & T suspended Debtor's services under the Master Agreement on the grounds that the Debtor was in default under the Master Agreement. Importantly, the alleged default of the Debtor is not a payment default, but rather pursuant to Section 3.2 of the Master Agreement, which, according to AT & T, gives AT & T the right to immediately terminate any service that AT & T has reason to believe is being used in violation of laws or regulations.

AT & T asserts that the services that the Debtor provides over its IP network are substantially the same as were being provided by AT & T, and therefore, the Debtor is also not exempt from paying these access charges. At the point that the bankruptcy case was filed, service had been suspended by AT & T pending a determination that the Debtor is an ESP, but AT & T had not yet assessed the access charges that it asserts are owed by the Debtor.

## II. Issues

The issues before the Court are:

- (1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and
- (2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.<sup>FN2</sup>

FN2. AT & T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not

reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT & T argues that the entire argument over cure amounts is a difference of about \$28,000.00 that AT & T is willing to forgo for now. However, AT & T later states in its objection (and argued at the hearing):

"To be sure, this is not the total which ultimately Transcom may owe. It is also possible that ... Transcom will owe additional amounts if it is determined that it should have been paying access charges. But at this point, AT & T has not billed for the access charges, so under the terms of the Addendum, they are not currently due.... AT & T is not requiring Transcom to provide adequate assurance of its ability to pay those charges should they be assessed, but will rely on the fact that post-assumption, these charges will be administrative claims.... Although Transcom's failure to pay access charges with respect to prepetition traffic was a breach, the Addendum requires, as a matter of contract, that those pre-petition charges be paid when billed. This contractual provision will be binding on Transcom post-assumption, and accordingly, is not the subject of a damage award now."

AT & T Objection p. 3-4. As will be discussed below, in evaluating the Debtor's business judgment in approving its assumption Motion, the Court must determine whether or not its approval of the Motion will result in a potentially large administrative expense to be borne by the estate.

AT & T argues against the Court's jurisdiction to determine this question as part of an assumption motion. However, the Court wonders if AT & T will make the same argument with regard to its post-assumption administrative claims it plans on asserting for past and future access charges that it states it will rely on for payment instead of asking for them to be included as cure payments under the pre-

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sent Motion.

**\*588 III. Analysis**

Under § 365(b)(1), a debtor-in-possession that has previously defaulted on an executory contract <sup>FN3</sup> may not assume that contract unless it: (A) cures, or provides adequate assurance that it will promptly cure, the default; (B) compensates the non-debtor party for any actual pecuniary loss resulting from the default; and (C) provides adequate assurance of future performance under such contract. See 11 U.S.C. § 365(b)(1).

<sup>FN3</sup>. The parties agree that the Master Agreement is an executory contract.

In its objection, briefing and arguments made at the hearing, AT & T does not object to the Debtor's assumption of the Master Agreement, provided the Debtor pays the cure amount, as determined by the Court. It does not expect the Debtor to cure any non-monetary defaults, including payment or proof of the ability to pay the access charges that have been incurred, as alleged by the SBC Telcos, as a prerequisite to assumption. See *In re BankVest Capital Corp.*, 360 F.3d 291, 300-301 (1st Cir.2004), cert. denied, 542 U.S. 919, 124 S.Ct. 2874, 159 L.Ed.2d 776 (2004) ("Congress meant § 365(b)(2)(D) to excuse debtors from the obligation to cure nonmonetary defaults as a condition of assumption.").

Only the Debtor offered evidence of the cure amounts due at the hearing totaling \$103,262.55. Therefore, based on this record, the current outstanding balance due from Debtor to AT & T is \$103,262.55 (the "Cure Amount"). Thus, upon payment of the Cure Amount Debtor's Motion should be approved by the Court, provided the Debtor can show adequate assurance of future performance.

[1][2] AT & T argues that this is where the Court's inquiry should cease. Since AT & T has suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT & T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT & T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to

assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. See *In re Liljeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir.2002); *In re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir.1985).

If by assuming the Master Agreement the Debtor would be liable for the large potential administrative claim, to which AT & T argues that it will be entitled, <sup>FN4</sup> or if the Debtor cannot show that it can perform under the Master Agreement, which states that the Debtor is an enhanced information services provider exempt from the access charges applicable to circuit switched interexchange calls, and the Debtor would lose money going forward under the Master Agreement should it be determined that the Debtor is not an ESP, then the Court should deny the Motion. On this record, the Debtor has established that it cannot perform under the Master Agreement, and indeed cannot continue its day-to-day operations or successfully reorganize, unless it qualifies as an Enhanced Service Provider.

<sup>FN4</sup>. See n.2 above.

AT & T and SBC Telcos argue that a forum selection clause in the Master Agreement should be enforced and that any determination as to whether the Debtor\*589 is an ESP, and thus exempt from access charges, must be tried in New York. While this argument may have validity in other contexts, the Court concludes that it has jurisdiction to decide this issue as it arises in the context of a motion to assume under § 365. See *In re Mirant Corp.*, 378 F.3d 511, 518 (5th Cir.2004) (finding that district court may authorize the rejection of an executory contract for the purchase of electricity as part of a bankruptcy reorganization and that the Federal Energy Regulatory Commission did not have exclusive jurisdiction in this context); see also, *Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056 (5th Cir.1997) (Bankruptcy Court possessed discretion to refuse to enforce an otherwise applicable arbitration provision where enforcement would conflict with the purpose or provisions of the Bankruptcy Code).

*In re Orion*, which is heavily relied upon by AT & T, is inapplicable in this proceeding. See *In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir.1993). On its face, *Orion* is distinguishable from this case in that in

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Orion, the debtor sought damages in an adversary proceeding at the same time it was seeking to assume the contract in question under Section 365. The bankruptcy court decided the Debtor's request for damages as a part of the assumption proceedings awarding the Debtor substantial damages. Here, the Debtor is not seeking a recovery from AT & T under the contract which would augment the estate. Rather the Debtor is only seeking to assume the contract within the parameters of Section 365. Similar issues to the one before this Court have been advanced by another bankruptcy court in this district.

The court in *In re Lorax Corp.*, 307 B.R. 560 (Bankr.N.D.Tex.2004), succinctly pointed out that a broad reading of the Orion opinion runs counter to the statutory scheme designed by Congress. *Lorax*, 307 B.R. at 566 n. 13. The *Lorax* court noted that Orion should not be read to limit a bankruptcy court's authority to decide a disputed contract issue as part of hearing an assumption motion. *Id.* To hold otherwise would severely limit a bankruptcy court's inherent equitable power to oversee the debtor's attempt at reorganization and would diffuse the bankruptcy court's power among a number of courts. The *Lorax* court found such a result to be at odds with the Supreme Court's command that reorganization proceed efficiently and expeditiously. *Id.* at 567 (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 376, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988)). This Court agrees. The determination of the Debtors status as an ESP is an important part of the assumption motion.

Since the Second Circuit's 1993 *Orion* opinion, the Second Circuit has further distinguished non-core and core jurisdiction proceedings involving contract disputes. In particular, if a contract dispute would have a "much more direct impact on the core administrative functions of the bankruptcy court" versus a dispute that would merely involve "augmentation of the estate," it is a core proceeding. *In re United States Lines, Inc.*, 197 F.3d 631, 638 (2d Cir.1999) (allowing the bankruptcy court to resolve disputes over major insurance policies, and recognizing that the debtor's indemnity contracts could be the most important asset of the estate). Accordingly, the Second Circuit would reach the same conclusion of core jurisdiction here since the dispute addressed by the Motion "directly affect[s]" the bankruptcy court's "core administrative function." *United States Lines*, at 639 (citations

omitted).

Determination, for purposes of the motion to assume, of whether the Debtor \*590 qualifies as an ESP and is exempt from paying access charges (the "ESP Issue") requires the Court to examine and take into account certain definitions under the Telecommunications Act of 1996 (the "Telecom Act"), and certain regulations and rulings of the Federal Communications Commission ("FCC"). None of the parties have demonstrated, however, that this is a matter of first impression or that any conflict exists between the Bankruptcy Code and non-Code cases. Thus, the Court may decide the ESP issues for purposes of the motion to assume.

[3] Several witnesses testified on the issues before the Court. Mr. Birdwell and the other representatives of the Debtor were credible in their testimony about the Debtor's business operations and services. The record establishes by a preponderance of the evidence that the service provided by Debtor is distinguishable from AT & T's specific service in a number of material ways, including, but not limited to, the following:

- (a) Debtor is not an interexchange (long-distance) carrier.
- (b) Debtor does not hold itself out as a long-distance carrier.
- (c) Debtor has no retail long-distance customers.
- (d) The efficiencies of Debtor's network result in reduced rates for its customers.
- (e) Debtor's system provides its customers with enhanced capabilities.
- (f) Debtor's system changes the content of every call that passes through it.

On its face, the AT & T Order is limited to AT & T and its specific services. This Court holds, therefore, that the AT & T Order does not control the determination of the ESP Issue in this case.

The term "enhanced service" is defined at 47 CFR § 67.702(a) as follows:

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For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Dr. Bernard Ku, who testified for SBC was a knowledgeable and impressive witness. However, during cross examination, he agreed that he was not familiar with the legal definition for enhanced service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Red 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications\*591 service" in 47 USC § 153(43) and (46), respectively, as follows:

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).

The term "telecommunications service" means the

offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

(a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services*, (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the evidence and testimony presented at the hearing, the Court finds, for purposes of the § 365 motion before it, that the Debtor's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Debtor's system falls outside of the definition of "telecommunications service" because Debtor's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Debtor's service is not a "telecommunications service" subject to access charges, but rather

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is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to the Debtor, that DataVoN provided "enhanced information services". See Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. The Debtor now uses DataVoN's assets in its business.

Because the Court has determined that the Debtor's service is an "enhanced service" not subject to the payment of access charges, the Debtor has met its burden of demonstrating adequate assurance of future performance under the Master Agreement. The Debtor has demonstrated that it is within Debtor's reasonable business judgment to assume the Master Agreement.

Regardless of the ability of the Debtor to assume this agreement, the Court cannot go further in its ruling, as the Debtor has requested to order AT & T to resume \*592 providing service to the Debtor under the Master Agreement. The Court has reached the conclusions stated herein in the context of the § 365 motion before it and on the record made at the hearing. An injunction against AT & T would require an adversary proceeding, a lawsuit. Both the Debtor and AT & T are still bound by the exclusive jurisdiction provision in § 13.6 of the Master Agreement, as found by the United States District Court for the Northern District of Texas, Hon. Terry R. Means. As Judge Means ruled, any suit brought to enforce the provisions of the Master Agreement must be brought in New York.

#### IV. Conclusion

In conclusion, the Court finds that the provisions of 11 U.S.C. § 365 have been met in this case. Because the Court finds that the Debtor's service is an enhanced service, not subject to payment of access charges, it is therefore within Debtor's reasonable business judgment to assume the Master Agreement with AT & T.

Only the Debtor offered evidence of the cure amounts at the hearing. Based on the record at the hearing, the current outstanding balance due from Debtor to AT & T is \$103,262.55. To assume the Master Agreement, the Debtor must pay this Cure Amount to AT & T within ten (10) days of the entry of the Court's order on this opinion.

A separate order will be entered consistent with

this memorandum opinion.

Bkrtcy.N.D.Tex.,2005.  
In re Transcom Enhanced Services, LLC  
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END OF DOCUMENT



# **EXHIBIT 4**

**TO**  
**HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S**  
**ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING**



**ENTERED**

TAWANA C. MARSHAL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed May 28, 2003.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	§	CASE NO. 02-38600-SAF-11
	§	(Jointly Administered)
DATAVON, INC., et al.,	§	CHAPTER 11
	§	
DEBTORS.	§	
	§	

**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; (ii) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iii) ESTABLISHING AUCTION DATE, RELATED DEADLINES AND BID PROCEDURES; (iv) APPROVING THE FORM AND MANNER OF SALE NOTICES; AND (v) APPROVING BREAK-UP FEES IN CONNECTION WITH THE SOLICITATION OF HIGHER OR BETTER OFFERS**

Upon the motion of DataVoN, Inc. ("DataVoN"), DTVN Holdings, Inc. ("DTVN"), Zydeco Exploration, Inc. ("Zydeco"), and Video Intelligence, Inc. ("VI") (collectively, the "Debtors") dated December 31, 2002, for, among other things, entry of an order under 11 U.S.C. §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 (i) authorizing

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and approving the sale of substantially all of the assets of the estate free and clear of liens, claims, encumbrances, interests and exempt from any stamp, transfer, recording or similar tax; (ii) authorizing the assumption and assignment of various executory contracts and unexpired leases; (iii) establishing an auction date, related deadlines and bid procedures in connection with the asset sale; (iv) approving the form and manner of sale notices to be sent to potential bidders, creditors and parties-in-interest; and (v) approving certain break-up fees in connection with the solicitation of higher or better offers for the assets (the "Sales Motion");<sup>1</sup> and the Court having entered on February 20, 2003 an order with respect to the Sale (i) Establishing Auction Date, Related Deadlines and Bid Procedures; (ii) Approving the Form and Manner of Sales Notices; and (iii) Approving Break-up Fees in Connection with the Solicitation of Higher or Better Offers (the "Bid Procedures Order"), that scheduled a hearing on the Sale Motion (the "Sale Hearing") and set an objection deadline with respect to the Sale; and the Sale Hearing having been commenced on April 1, 2003; and the Court having reviewed and considered the Sales Motion, the objections thereto, if any, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sales Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Sale Hearing and in this case; and after due deliberation thereon; and good cause appearing therefore; it is hereby

FOUND AND DETERMINED THAT:<sup>2</sup>

1. The Court has jurisdiction over the Sales Motion pursuant to 28 U.S.C. § 1334.

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sales Motion.

<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

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This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Sales Motion are §§ 105(a), 363(b), (f), (m), and (n), 365, and 1146(c) of the United States Bankruptcy Code (11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code")) and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014.

3. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sales Motion, the Sale Hearing, and the Sale has been provided in accordance with Bankruptcy Code §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 and in compliance with the Bidding Procedures Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Sales Motion, the Sale Hearing, or the Sale is or shall be required.

4. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the assumption and assignment of the Assumed Contracts and the cure payments to be made therefore has been provided in accordance with Bankruptcy Code §§ 105(a) and 365 and Fed.R.Bankr.P. 9014; (ii) such notice was good and sufficient; and (iii) no other or further notice of the assumption and assignment of the Assumed Contracts is or shall be required.

5. As demonstrated by: (i) the testimony and other evidence proffered or adduced at

the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and the Bid Selection Committee marketed the Assets and conducted the Sale process in compliance with the Bidding Procedures Order.

6. The Debtors: (i) have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets by the Debtors has been duly and validly authorized by all necessary corporate action of the Debtors; (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement; and (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation by the Debtors of the transactions contemplated thereby. No consents or approvals other than those expressly provided for in the Agreement are required for the Debtors to consummate such transactions.

7. Approval of the Agreement and consummation of the Sale at this time are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

8. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to Bankruptcy Code § 363(b) prior to, and outside of, a plan of reorganization in that, among other things:

a. The Debtors and the Bid Selection Committee diligently and in good faith marketed the Assets to secure the highest and best offer therefore. Further, the Debtors and the Bid Selection Committee published a notice substantially in the form of the Sale Notice in *The Wall Street Journal*. The terms and conditions set forth in the Agreement, and the transfer to Purchaser of the Assets pursuant thereto, represent a fair and reasonable purchase price and constitute the highest and best offer obtainable for the Assets.

b. A sale of the Assets at this time to Purchaser pursuant to Bankruptcy Code § 363(b) is the only viable alternative to preserve the value of the Assets and to maximize the Debtors' estates for the benefit of all constituencies. Delaying approval of the Sale may result in Purchaser's termination of the Agreement and result in an alternative

outcome that will achieve far less value for creditors.

c. Except as otherwise provided in this Sale Order, the cash proceeds of the Sale will be distributed to the Debtors' administrative and pre-petition creditors under the terms of a confirmed liquidating Chapter 11 plan.

d. The highest and best offer received for the purchase of the Assets came from Transcom Communications, Inc. ("Transcom" or "Purchaser").

9. On March 3, 2003, the Debtors filed their Notice of Cure Amounts Under Contracts and Leases that may be Assumed and Assigned to Purchaser of Substantially All of Debtors' Assets, detailing the executory contracts that may be assumed and assigned to the successful purchaser of the Debtors' assets (the "Assumed Contracts"). The Cure Notice not only fixed the Cure Amount for each contract for any non-objecting party, but also constituted a waiver by any non-objecting party to the assumption and assignment of the various contracts to the Purchaser. The Assumed Contracts are unexpired and executory contracts within the meaning of the Bankruptcy Code. Pursuant to the Agreement, the Purchaser shall cure all monetary defaults under the Assumed Contracts as provided for in the Notice or as agreed between the parties to any Assumed Contract. There are no non-monetary defaults requiring cure. The Sale satisfies the requirements of Bankruptcy Code § 365(b). The Debtors are not required to cure any defaults of the kind described in Bankruptcy Code § 365(b)(2). The Purchaser's excellent financial health and own expertise in the telecommunications industry provide adequate assurance of future performance to all non-debtor parties to Assumed Contracts. Pursuant to Bankruptcy Code § 365(f), all restrictions on assignment in any of the Assumed Contracts are unenforceable against the Debtors and all Assumed Contracts may lawfully be assigned to the Purchaser.

10. A reasonable opportunity to object or be heard with respect to the Sale Motion

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and the relief requested therein has been afforded to all interested persons and entities, including:

- (i) each and every holder of a "claim" (as defined in Bankruptcy Code § 101(5)) against the Debtors;
- (ii) each and every holder of an equity or other interest in the Debtors;
- (iii) each and every contractor and subcontractor that has performed any services or otherwise dealt with any of the Assets;
- (iv) each and every Governmental Entity with jurisdiction over the Debtors or any of the Assets;
- (v) each and every holder of an Encumbrance on any of the Assets;
- (vi) the Office of the United States Trustee for the Northern District of Texas;
- (vii) the Official Committee of Unsecured Creditors appointed in the Debtors' cases under the Bankruptcy Code, if any;
- (viii) any and all other persons and entities upon whom the Debtors are required (pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any order of the Court) to serve notice;
- (ix) any and all other persons and entities upon whom Purchaser instructed Seller to serve notice; and
- (x) any parties who are on the list of prospective purchasers maintained by CRP.

11. The Agreement was negotiated, proposed, and entered into by the Debtors, CRP, members of the Bid Selection Committee, and Purchaser without collusion, in good faith, and from arm's-length bargaining positions. None of the Debtors, CRP, members of the Bid Selection Committee, and the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code § 363(n).

12. Purchaser is a good faith purchaser under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. Purchaser will be acting in good faith within the meaning of Bankruptcy Code § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Order.

13. The consideration provided by Purchaser for the Assets pursuant to the

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Agreement: (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical, available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code.

14. The Sale must be approved promptly in order to preserve the value of the Assets.

15. The transfer of the Assets to Purchaser will be a legal, valid, and effective transfer of such Assets, and will vest Purchaser with all right, title, and interest of the Debtors to such Assets free and clear of all Interests, including those: (i) that purport to give any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or Purchaser's interest in such Assets, or any similar rights, or (ii) relating to taxes arising under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the date (the "Closing Date") of the consummation of the Agreement (the "Closing").

16. Purchaser would not have entered into the Agreement, and would not have been willing to consummate the transactions contemplated thereby, if the sale of the Assets to Purchaser were not free and clear of all Interests, or if Purchaser would, or in the future could, be liable for any of the Interests. Thus, any ruling that the sale of Assets was not free and clear of all Interests, or that Purchaser would, or in the future could, be liable for any Interests would adversely affect the Debtors, their estates, and their creditors.

17. The Debtors may sell the Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Sales Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2).

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Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale.

18. Except with respect to the payment of the Cure Amounts and the Assumed Liabilities, the transfer of the Assets to Purchaser will not subject Purchaser, prior to the Closing Date, to any liability whatsoever with respect to the operation of the Debtors' business or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability.

19. The valuations placed by the Bid Selection Committee on the Purchaser's bid are fair and reasonable and reflect fair and reasonable consideration for the sale of the Assets.

20. Through DataVoN, the primary operating subsidiary, the Debtors provide enhanced information services, including toll-quality voice and data services utilizing converged, Internet protocol (IP) transmitted over private IP networks. DataVoN, Inc., the primary operating subsidiary of the Debtors is a provider of wholesale enhanced information services. DataVoN provides toll quality voice and data communications services over private IP networks (VoIP) to carrier and enterprise customers. Companies who deploy soft switch equipment on an IP network can provide high quality video, voice, and data services while retaining flexibility, scalability, and cost efficiencies. DTVN is a holding company with no operations of its own. DataVoN's information services include voice origination, voice termination, 8xx origination and termination, utilizing voice over IP technology. VI formerly provided video services. That

line of business has been withdrawn. Zydeco, once the manager of DTVN's corporate oil and gas holdings, sold most of its assets in the third quarter of 2001 and retains only nominal activity.

21. Objections to the Sales Motion were filed by Cisco Systems, Inc. and Unipoint Holdings, Inc. with respect to certain aspects of the Sales Motion. Those objections were resolved by settlement terms announced on the record as follows: (1) the "Transcom Note" as set forth in section 9.32(g) of the Agreement shall be modified to provide that the original principal amount of the note may not be less than \$1,282,539 and that such principal and accrued interest, if any, may be offset only by an allowed secured claim of Transcom as set forth in a final order; (2) the interest accruing on any allowed secured claim of Transcom, if any, will be equal to and shall not exceed an offsetting interest under the Transcom Note; (3) on the Closing Date of the Sale, Transcom shall wire transfer the sum of \$100,000 to Unipoint, per Unipoint's instructions, in connection with that certain Reimbursement Agreement executed by and between Unipoint and Transcom; (4) Transcom will, at Closing, pay \$440,000.00, to Hughes & Luce, LLC, to be held in Hughes & Luce, L.L.P.'s IOLTA Trust Account, in trust for the payment of Cisco's administrative claim in this case in accordance with the Term Sheet by and between Cisco and the Debtors as approved by the Court in its Order dated March 26, 2003, with such funds to be wire transferred by Hughes & Luce, L.L.P., pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale; and (5) Transcom shall amend the Agreement to reflect that Transcom is not acquiring net operating losses of the Debtors. Each of the foregoing terms shall be collectively referred to hereafter as the "Settlement Terms."

22. All cash consideration paid on the date of Closing of the Sale ("Sale Proceeds") shall be delivered to Hughes & Luce, L.L.P. ("H&L") and shall be placed in H&L's IOLTA

Trust Account. In addition to the Sale Proceeds, pursuant to the Settlement Terms, \$440,000.00 shall be delivered to H&L, to be disbursed to Cisco pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale. Pursuant to the terms of that certain Order approving employee stay put bonuses, \$344,860.54 of the Sale Proceeds, if delivered to H&L, shall be disbursed to the DataVoN, Inc. payroll account pursuant to written instructions from DataVoN, Inc., for the purpose of funding the employee stay put bonuses. After the aforesaid disbursements to Cisco and for the employee stay put bonuses, all remaining Sale Proceeds delivered to H&L shall be held in H&L's IOLTA Trust Account until the earlier to occur of (i) Confirmation of the Plan and creation of the Liquidating Trust, at which time H&L shall transfer such remaining Sale Proceeds to the Liquidating Trust by wire transfer, pursuant to the written instructions of the Liquidating Trustee, (ii) receipt by H&L of written Order of the Court ordering disbursement of the Sale Proceeds if the Plan is not Confirmed, or (iii) June 30, 2003, and petition by H&L to the Court requesting further direction of the Court regarding disbursement of remaining Sale Proceeds.

**NOW THEREFORE, IT IS HEREBY:**

**General Provisions**

**ORDERED** that the Sales Motion is granted, as further described herein; it is further

**ORDERED** that all objections to the Sales Motion or to the relief requested therein that have not been withdrawn, waived, or settled and all reservations of rights included in any objection to the Sales Motion are hereby overruled on the merits; it is further

**ORDERED** that the Court's findings and conclusions stated at the Sale Hearing are incorporated herein; it is further

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### **Approval of the Agreement**

**ORDERED** that the Agreement as modified by the Settlement Terms, and all of the terms and conditions thereof, are hereby approved; it is further

**ORDERED** that pursuant to Bankruptcy Code § 363(b), the Debtors are authorized and directed to consummate the Sale as modified by the Settlement Terms, pursuant to and in accordance with the terms and conditions of the Agreement as modified by the Settlement Terms; it is further

**ORDERED** that the Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Agreement as modified by the Settlement Terms, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement as modified by the Settlement Terms, and to take all further actions as may be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring the Assets to Purchaser or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement as modified by the Settlement Terms; it is further

**ORDERED** that on the Closing Date of the Sale, the Debtors and Hughes & Luce, L.L.P. (“H&L”) shall (i) refund the \$50,000 deposit paid by Unipoint Holdings, Inc. (“Unipoint”) and held by H&L in its IOLTA trust account by wire transfer per written instructions from Unipoint, (ii) refund the \$50,000 deposit paid by CNM Network Inc. (“CNM”) and held by H&L in its IOLTA trust account by wire transfer per written instructions from CNM, and (iii) provided Transcom substitutes the equivalent sum on the Closing Date of the Sale, refund the \$50,000

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deposit paid by Transcom and Sowell and held by H&L in its IOLTA trust account by wire transfer per written instructions from Transcom; it is further

#### **Assignment and Assumption of Assumed Contracts**

**ORDERED** that the Debtors are hereby authorized and directed, in accordance with § 365(b) of the Bankruptcy Code: (i) to assume and assign to the Purchaser the Assumed Contracts, with the Purchaser being responsible for the cure amounts specified in Exhibit "A" attached hereto (the "Cure Amounts") and (ii) to execute and deliver to the Purchaser such assignment documents as may be necessary to sell, assign, and transfer the Assumed Contracts. The Purchaser shall provide no adequate assurance of future performance under the Assumed Contracts, other than its promise to perform pursuant to the terms and conditions of the Assumed Contracts. Pursuant to Bankruptcy Code §§ 365(a), (b), (c) and (f), the Purchaser is directed to pay the Cure Amounts on the Closing Date, within a reasonable period of time thereafter, or as agreed by the Purchaser with the non-debtor party or parties to any Assumed Contract; it is further

**ORDERED** that upon the closing of the Agreement in accordance with this Order, any and all defaults under the Assumed Contracts shall be deemed cured in all respects; it is further

**ORDERED** that all provisions limiting the assumption and/or assignment of any of the Assumed Contracts are invalid and unenforceable pursuant to Bankruptcy Code § 365(f); it is further

#### **Transfer of Assets**

**ORDERED** that pursuant to Bankruptcy Code §§ 105(a) and 363(f), all Assets shall be transferred to Purchaser as of the Closing Date, and all Assets shall be free and clear of all

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STAMP, TRANSFER, RECORDING OR SIMILAR TAX, ETC. - Page 12**

Interests, with all such Interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto; it is further

**ORDERED** that except as expressly permitted or otherwise specifically provided by the Agreement as modified by the Settlement Terms or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under, out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser or its successors or assigns, their property, or the Assets, such persons' or entities' Interests; it is further

**ORDERED** that the transfer of the Assets to Purchaser pursuant to the Agreement as modified by the Settlement Terms constitutes a legal, valid, and effective transfer of the Assets and shall vest Purchaser with all right, title, and interest of the Debtors in and to all Assets free and clear of all Interests; it is further

#### **Additional Provisions**

**ORDERED** that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia; it is further

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**ORDERED** that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms is fair and reasonable and may not be avoided under Bankruptcy Code § 363(n); it is further

**ORDERED** that on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist; it is further

**ORDERED** that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests existing as to the Debtors or the Assets prior to the Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; it is further

**ORDERED** that each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement; it is further

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STAMP, TRANSFER, RECORDING OR SIMILAR TAX, ETC. - Page 14**

**ORDERED** that if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests in the Debtors or the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Debtors or the Assets or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever; it is further

**ORDERED** that Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets, other than payment of the Cure Amounts, the amounts specified in the Settlement Terms and the Assumed Liabilities and its obligations to perform under the Assumed Contracts after the Closing Date. Without limiting the generality of the foregoing, Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and Purchaser shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date except as specified in the Settlement Terms; it is further

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STAMP, TRANSFER, RECORDING OR SIMILAR TAX, ETC. - Page 15**

Error! Unknown document property name.



**ORDERED** that under no circumstances shall Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors. All persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests against Purchaser, its successors and assigns, its properties, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Assets. Following the Closing Date no holder of an Interest in the Debtors shall interfere with Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in its chapter 11 case; it is further

**ORDERED** that subject to, and except as otherwise provided in, the Bidding Procedures Order, any amounts that become payable by the Debtors pursuant to the Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Agreement shall (a) constitute administrative expenses of the Debtors' estate and (b) be paid by the Debtors in the time and manner as provided in the Agreement without further order of this Court; it is further

**ORDERED** that this Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, the Settlement Terms, and all amendments thereto, any waivers and consents thereunder, and of each of the documents executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets

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to Purchaser, (b) resolve any disputes arising under or related to the Agreement except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Sale Order, and (d) protect Purchaser against any Interests in the Debtors or the Assets; it is further

**ORDERED** that nothing contained in any plan of liquidation confirmed in these cases or in any final order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agreement, the Settlement Terms, or the terms of this Sale Order; it is further

**ORDERED** that the transfer of the Assets pursuant to the Sale shall not subject Purchaser to any liability with respect to the operation of the Debtors' business prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability; it is further

**ORDERED** that the transactions contemplated by the Agreement as modified by the Settlement Terms are undertaken by Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Bankruptcy Code § 363(m); it is further

**ORDERED** that the terms and provisions of the Agreement, the Settlement Terms and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Purchaser, and their respective affiliates, successors

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**STAMP, TRANSFER, RECORDING OR SIMILAR TAX, ETC. - Page 17**

and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code. The terms and provisions of the Agreement and of this Sale Order likewise shall be binding on any such trustee(s); it is further

**ORDERED** that the failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement as modified by the Settlement Terms be authorized and approved in its entirety; it is further

**ORDERED** that the Agreement and related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or impair the Settlement Terms; it is further

**ORDERED** that the transfer of the Assets pursuant to the Sale is a transfer pursuant to Bankruptcy Code § 1146(c), and accordingly shall not be taxed under any law imposing a stamp tax or a sale, transfer, or any other similar tax; it is further

**ORDERED** that as provided by Fed.R.Bankr.P. 6004(g), this Sale Order shall not be stayed for 10 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry; it is further

**ORDERED** that the provisions of this Sale Order and the Settlement Terms recited herein are non-severable and mutually dependent; and it is further

**ORDER GRANTING MOTION FOR ENTRY OF ORDERS  
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STAMP, TRANSFER, RECORDING OR SIMILAR TAX, ETC. - Page 18**

**ORDERED** that in the event that Purchaser fails to close the Sale Agreement as modified by the Settlement Terms on or before June 2, 2003, the Debtors shall close under the next highest bid from Unipoint Holdings, Inc. reflected in its Asset Purchase Agreement of April 25, 2003 (the "Unipoint APA"). In such event, this Order and all of its findings shall be automatically effective as to Unipoint Holdings, Inc. as "Purchaser" and the Unipoint APA as the "Sale Agreement" without further hearing or order of this Court.

### END OF ORDER ###

# EXHIBIT A TO SALE ORDER

Non-Debtor Contract Party	Agreement Name/Description	Proposed Cure Amount (as of April 4, 2003)
Broadwing Communication Services, Inc.	Master Service Agreement dated February 28, 2001 as amended and supplemented; Settlement Agreement as approved by Bankruptcy Court Order dated January 28, 2003	\$ 60,000.00
Campbell Road Village (Ippolito)	Gross Standard Shopping Center Lease dated May 19, 2000	\$ 1,455.17
Dell Financial Services	Lease dated August 1, 2001	\$ 10,238.32
Electronic Data Systems Corporation (EDS)	Sublease Agreement September 27, 2002	\$ -
Gulfcoast Workstation Corp	Equipment Lease Agreement dated February 2, 2002	\$ 20,000.00
Illuminet, Inc.	Connectivity Service Agreement dated October 4, 2000	\$ 18,116.95
IpVerse/Nexverse	Software Licenses Agreement dated April 11, 2001	\$ 746,144.25
IX-2 Networks	License Agreement for Use of Collocation Space dated March 28, 2000	\$ -
Looking Glass Networks	Looking Glass Service Agreement dated December 2001	\$ 1,062.00
OneStar Long Distance	Wholesale Service Agreement dated November 12, 2002	\$ -
Pae Tec Communications, Inc.	Wholesale Local Service Agreement dated July 2002	\$ 27,289.38
RiverRock Systems, Ltd.	Application Service Provider Agreement date May 1, 2001	\$ 86,029.48
Sun Microsystems, Inc.	Sun Microsystems, Inc. Customer Agreement dated March 28, 2001	\$ 27,687.33
The CIT Group	Lease Agreement dated October 16, 2001	\$ 1,076.50

EXHIBIT "A" TO SALE ORDER - Page 1

Error! Unknown document property name.

110234-TP  
 Halo/Transcom Answers to Issues 1-8 in WI case, filed Dec. 2, 2011  
 JSM-1, 77 of 82

# EXHIBIT A TO SALE ORDER

Focal Communications Corporation	Master Service Agreement dated June 14, 2001, as amended	As Agreed
Transcom Communication Corporation	Master Service Agreement dated August 15, 2001, as supplemented	\$ 1,192,229.61
Barr Tel/ColoCentral	Master Services Agreement	\$ -
C2C Fiber, Inc. n/k/a Capital Telecommunications, Inc.	Master Services Agreement dated August 31, 2001	\$ -
Cytus Communication	Master Services Agreement dated December 20, 2002	\$ -
ePhone Telecom, Inc.	Master Services Agreement dated April 3, 2002	\$ -
Excel Telecommunications, Inc.	Master Services Agreement dated January 19, 2001	\$ -
Florida Digital Network	Master Services Agreement dated September 7, 2001	\$ -
Go-Comm, Inc.	Master Services Agreement dated April 1, 2002	\$ -
Grande Communications Networks, Inc.	Master Services Agreement dated April 13, 2001	\$ -
IDT Telecom LLC	Master Services Agreement dated February 12, 2002	\$ -
IONEX Telecommunications, Inc.	Master Services Agreement dated October 28, 2002	\$ -
ITC DeltaCom Communications, Inc.	Master Services Agreement dated September 25, 2002	\$ -
ITXC Corporation	Master Services Agreement dated September 31, 2002	\$ -
Linx Communications, Inc.	Master Services Agreement dated June 5, 2002	\$ -
Macro Communications, Inc.	Master Services Agreement dated December 3, 2002	\$ -

# EXHIBIT A TO SALE ORDER

Novatel, Inc.	Reciprocal Services Agreement dated January 18, 2002	\$	-
Novolink Communications, Inc.	Reciprocal Services Agreement dated January 10, 2002	\$	-
Orion Telecommunications Corporation	Master Services Agreement dated August 13, 2001	\$	-
TCAST Communications, Inc.	Master Services Agreement dated July 10, 2002	\$	-
Telic Communications, Inc.	Master Services Agreement dated September 21, 2001	\$	-
Transcom Communications, Inc.	Master Services Agreement dated February 16, 2001	\$	-
TXU Communications Telecom Services Company	Master Services Agreement dated April 9, 2002	\$	-
Voice Exchange, Inc.	Master Services Agreement dated May 2, 2002	\$	-
Webtel Wireless, Inc.	Master Services Agreement dated July 19, 2002	\$	-
WorldxChange Corporation	Master Services Agreement dated August 15, 2002	\$	-
World Link Telecom, Inc.	Master Services Agreement dated October 9, 2002	\$	-
XTEL	Master Services Agreement	\$	-
TRC Telecom, Inc.	Master Services Agreement dated December 20, 2001	\$	-
Capital Telecommunications, Inc.	Master Services Agreement dated March 19, 2001	\$	-
SafeTel, Inc.	Master Services Agreement dated June 27, 2002	\$	-
CT Cube LP	Master Services Agreement dated September 25, 2002	\$	-

# EXHIBIT A TO SALE ORDER

CGKC&H Rural Cellular #2	Master Services Agreement dated September 25, 2002	\$	-
Dollar Phone Corporation	Master Services Agreement dated February 4, 2003	\$	-
Pae Tec Communications, Inc.	Reciprocal Services Agreement dated July 15, 2002	\$	-
MCI Worldcom Network Services, Inc.	Termination Services Agreement dated July 31, 2001	\$	-
McGregor Bay Communications, Inc.	Agency Agreement dated March 18, 2002	\$	-
Chip Greenberg Studios, Inc.	Agency Agreement dated July 25, 2002	\$	-
CallNet, L.L.C.	Agency Agreement dated June 27, 2001	\$	-
Barry L. Greenspan	Agency Agreement dated January 10, 2002	\$	-
Brandon J. Becicka	Agency Agreement dated May 9, 2002	\$	-
		\$	2,191,328.99



# EXHIBIT 5

TO  
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S  
ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING



**Federal Communications Commission**  
Wireless Telecommunications Bureau

1

**RADIO STATION AUTHORIZATION**

LICENSEE: HALO WIRELESS

ATTN: NATHAN NELSON  
HALO WIRELESS  
307 WEST 7TH STREET SUITE 1600  
FORT WORTH, TX 76102-5114

<b>Call Sign</b> WQJW781	<b>File Number</b> 0003681223
<b>Radio Service</b> NN - 3650-3700 MHz	
<b>Regulatory Status</b> Common Carrier	

FCC Registration Number (FRN): 0018359711

<b>Grant Date</b> 01-27-2009	<b>Effective Date</b> 01-27-2009	<b>Expiration Date</b> 11-30-2018	<b>Print Date</b> 01-27-2009
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Market Name: Nationwide

Channel Block: 003650.00000000 - 003700.00000000 MHz

**Waivers/Conditions:**

This nationwide, non-exclusive license qualifies the licensee to register individual fixed and base stations for wireless operations in the 3650-3700 MHz band. This license does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station on ULS and mobile and portable stations are authorized to operate only if they can positively receive and decode an enabling signal transmitted by a registered base station. To register individual fixed and base stations the licensee must file FCC Form 601 and Schedule M with the FCC. See Public Notice DA 07-4605 (rel November 15, 2007)

**Conditions:**

Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

In Re: ) Case No. 11-42464  
HALO WIRELESS, INC., )  
Debtor. ) Sherman, Texas  
September 19, 2011  
SECTION 341 MEETING OF  
CREDITORS

TRANSCRIPT OF PROCEEDINGS CONDUCTED  
BY THE UNITED STATES TRUSTEE

ATTENDEES:

For the U.S. Trustee: John M. Vardeman  
OFFICE OF THE UNITED STATES  
TRUSTEE  
110 N. College Street, Suite 300  
Tyler, TX 75702  
(903) 590-1450 x218

For the Debtor: E. Paul Keiffer  
Kim E. Moses  
WRIGHT GINSBERG BRUSILOW  
Republic Center, Suite 4150  
325 N. St. Paul Street  
Dallas, TX 75201  
(214) 651-6517

For Texas and Missouri Telephone Companies: Brook B. Brown  
MCGINNIS, LOCHRIDGE & KILGORE,  
LLP  
600 Congress Avenue, Ste. 2100  
Austin, TX 78701  
(512) 495-6000

For TDS Telecom: Cassandra A. Sepanik  
David M. Bennett  
THOMPSON & KNIGHT, LLP  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, TX 75201  
(214) 969-1700

1 For AT&T:

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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   SHERMAN, TEXAS - SEPTEMBER 19, 2011

2                   MR. VARDEMAN: This is the meeting of creditors in  
3 Bankruptcy Case No. 11-42464, Halo Wireless, Inc. That's the  
4 name of the debtor. The Debtor's attorney is Mr. Paul  
5 Keiffer, and also Ms. Kim Moses. Both of those are present  
6 today. The Debtor's representatives are Russell Wiseman and  
7 Jeff Miller. I have checked their driver's licenses, for the  
8 record.

9                   Mr. Wiseman and Mr. Miller, my name is John Vardeman.  
10 I'm an attorney with the U.S. Trustee's Office. I need to  
11 swear you in and ask you some questions. Please raise your  
12 right hand as I swear you in, and please answer all of my  
13 questions out loud. We are recording this.

14                   (Mr. Wiseman and Mr. Miller are sworn.)

15                   MR. VARDEMAN: And Mr. Wiseman, what is your  
16 capacity with the Debtor?

17                   MR. WISEMAN: President and Chief Operating Officer.

18                   MR. VARDEMAN: And Mr. Miller?

19                   MR. MILLER: Chief Financial Officer.

20                   MR. VARDEMAN: Okay. Did you help Mr. Keiffer and  
21 Ms. Moses in the preparation of the bankruptcy petition, the  
22 schedules, and the Statement of Financial Affairs filed in  
23 this case?

24                   MR. WISEMAN: Yes.

25                   MR. MILLER: Yes.

1 MR. VARDEMAN: Is all of the information contained  
2 in the bankruptcy filing true and correct?

3 MR. WISEMAN: Yes, to our knowledge.

4 MR. MILLER: Yes.

5 MR. VARDEMAN: Did you list all of the Debtor's  
6 assets?

7 MR. WISEMAN: Yes.

8 MR. MILLER: Yes.

9 MR. VARDEMAN: Did you list all of the Debtor's  
10 liabilities?

11 MR. WISEMAN: Yes.

12 MR. MILLER: Yes.

13 MR. VARDEMAN: Is there anything in the bankruptcy  
14 filing that needs to be changed or corrected at this point?

15 MR. WISEMAN: No.

16 MR. MILLER: No.

17 MR. VARDEMAN: Okay. Mr. Keiffer, as I understand,  
18 the Debtor was provided approximately \$50,000 as a retainer  
19 in this case. Is that correct?

20 MR. KEIFFER: Correct. Of which \$42,000 was filed  
21 with the -- as the actual retainer. The \$8,000 was pre --  
22 earned prepetition.

23 MR. VARDEMAN: All right. And there is an  
24 application to employ on file. Is that correct?

25 MR. KEIFFER: Already granted.

1 MR. VARDEMAN: Are there going to be any other  
2 professionals hired in this case?

3 MR. KEIFFER: There are already two professionals  
4 employed by the Court. There are two that remain at issue.

5 MR. VARDEMAN: These are special counsel?

6 MR. KEIFFER: Correct.

7 MR. VARDEMAN: Any CPAs or Realtors or anything, --

8 MR. KEIFFER: No.

9 MR. VARDEMAN: -- valuation experts?

10 MR. KEIFFER: Not at this juncture.

11 MR. VARDEMAN: All right. Where is the debtor in  
12 possession account located?

13 MR. MILLER: Wells Fargo.

14 MR. VARDEMAN: Are there any other accounts still  
15 open that the Debtor has an interest in?

16 MR. MILLER: No, sir.

17 MR. VARDEMAN: How much money does the Debtor have?  
18 Everything?

19 MR. KEIFFER: Today, or on the date of --

20 MR. VARDEMAN: Today. Approximately.

21 MR. MILLER: I don't know that. I mean, --

22 MR. VARDEMAN: Mr. Wiseman, do you know?

23 MR. WISEMAN: I do not know, no.

24 MR. VARDEMAN: Okay. How would you find out?

25 MR. MILLER: I'd just call. I mean, I know at the

1 end of August there was roughly \$300,000 in the account.

2 MR. GERBER: Could you speak up a bit?

3 MR. MILLER: Sure.

4 MR. GERBER: And say it again?

5 MR. MILLER: Sure. At the end of August, there was  
6 roughly \$300,000 on the books.

7 MR. VARDEMAN: Is there a cash collateral issue in  
8 this case?

9 MR. KEIFFER: No.

10 MR. VARDEMAN: The case was filed on August the 8th.  
11 I believe, then, the monthly operating report would be first  
12 due tomorrow, on September the 20th, and every 20th of the  
13 month thereafter.

14 MR. KEIFFER: Correct. And working on it now.  
15 People are working on it now. We should get our first draft  
16 this afternoon.

17 MR. VARDEMAN: Are you operating a business?

18 MR. MILLER: Yes.

19 MR. VARDEMAN: Okay. How many employees --

20 MR. KEIFFER: Try to be a little more forceful in  
21 your --

22 MR. VARDEMAN: Yeah. We are recording it.

23 MR. MILLER: I'm sorry. Okay.

24 MR. VARDEMAN: How many employees?

25 MR. MILLER: Two employees, and 15 -- 15 --



1 MR. WISEMAN: Contractor/consultants included, or  
2 just employees?

3 MR. VARDEMAN: Just employees.

4 MR. MILLER: Two.

5 MR. VARDEMAN: Are you the two employees?

6 MR. WISEMAN: No. Well, he is.

7 MR. MILLER: I am a --

8 MR. VARDEMAN: Okay. And who's the other employee?

9 MR. MILLER: Carolyn Malone.

10 MR. VARDEMAN: All right. Are your wages current  
11 since the date of the bankruptcy?

12 MR. MILLER: Yes.

13 MR. VARDEMAN: Tax withholding?

14 MR. MILLER: Yes.

15 MR. VARDEMAN: All the bills that have come due  
16 since the date of the bankruptcy, are those current?

17 MR. MILLER: Yes. All right. Can you --

18 MR. KEIFFER: We usually say all the bills that have  
19 accrued postpetition and are due currently, we have. There  
20 may have been other bills that have come due, but the split,  
21 we've -- we'll take the pre and post and take care of that.

22 MR. VARDEMAN: Is it the same answer?

23 MR. MILLER: Yes.

24 MR. VARDEMAN: Okay. Are there any officers that  
25 are being compensated? Are you being compensated?

1 MR. MILLER: Yes.

2 MR. VARDEMAN: All right. And how much are you  
3 compensated, Mr. Miller?

4 MR. MILLER: \$500 a month.

5 MR. VARDEMAN: Is that it?

6 MR. MILLER: Yes.

7 MR. VARDEMAN: Mr. Wiseman?

8 MR. WISEMAN: Yes, sir?

9 MR. VARDEMAN: Are you being compensated?

10 MR. WISEMAN: Yes.

11 MR. VARDEMAN: How much?

12 MR. WISEMAN: As -- I'm not an employee.

13 MR. VARDEMAN: As an officer?

14 MR. WISEMAN: My annual compensation through my  
15 employer is \$200,000 a year.

16 MR. VARDEMAN: Who is your employer?

17 MR. WISEMAN: Source Communications of America.

18 MR. VARDEMAN: All right. Do you receive any  
19 compensation from Halo Wireless?

20 MR. KEIFFER: Directly?

21 MR. WISEMAN: Directly? No.

22 MR. VARDEMAN: Okay. Any other officers that  
23 receive compensation?

24 MR. MILLER: Carolyn Malone.

25 MR. KEIFFER: Is she an officer or an employee?

1 MR. MILLER: She's an officer and an employee.

2 MR. KEIFFER: All right.

3 MR. VARDEMAN: How much does she get?

4 MR. MILLER: \$500 a month.

5 MR. VARDEMAN: Where do you carry your casualty and  
6 liability insurance?

7 MR. MILLER: I'd have to look it up.

8 MR. KEIFFER: I don't know that there's a statement  
9 on it. Do you recall, Kim? Do we pay any -- we sent the  
10 data to them.

11 MR. VARDEMAN: You've provided that to our office?

12 MR. KEIFFER: Yes. We provided that --

13 MR. VARDEMAN: Okay. Then I'll waive that question  
14 for the time being until we have a chance to look at that.

15 Okay. Franchises and licenses: Are there franchises and  
16 licenses that the Debtor has?

17 MR. WISEMAN: Would you consider the radio station  
18 authorization from the FCC a license?

19 MR. VARDEMAN: I would.

20 MR. KEIFFER: Yes.

21 MR. WISEMAN: Off the top of my head, that's the  
22 only one I can think of.

23 MR. VARDEMAN: FCC license? Is there just one?

24 MR. WISEMAN: Yes.

25 MR. VARDEMAN: Are you current with your obligations

1 on that?

2 MR. WISEMAN: There are no obligations on it.

3 MR. KEIFFER: We do have another license listed on  
4 Schedule B-23 as Ameliowave software license.

5 MR. VARDEMAN: Okay.

6 MR. KEIFFER: But that's -- I don't know if -- you  
7 know, that depends upon whether you consider your Microsoft  
8 operating system license as a license.

9 MR. VARDEMAN: Okay. All right.

10 MR. MILLER: Right. It's just a software license.

11 MR. VARDEMAN: Right. Mr. Keiffer, very briefly,  
12 tell me how we got here and where we're going. I think  
13 everybody knows, though.

14 MR. KEIFFER: Everybody knows and everybody has  
15 their opinions on whether they agree with how I put it or  
16 not. But the Debtor was facing or involved in at least 20  
17 actions in 10 different states, in either public utilities  
18 commissions, public service commissions, state district or  
19 U.S. district courts, some of which the Debtor brought  
20 themselves but most of which they had not, the vast majority  
21 they had not.

22 Regarding the nature of the Debtor's operations, that 20  
23 -- and, again, continued to increase; it was moving up in  
24 time -- litigation sequence was crippling to the Debtor's  
25 prospects. The Debtor could not continue, did not have the

1 There may be interim decisions that may make one thing happen  
2 and you have to operate under that, but there'll be appellate  
3 rights. This matter will not, I suspect, when the first  
4 judge makes the first statement about -- at the first battle,  
5 that that will be the end of it. I suspect we'll be going up  
6 as far as these -- as circumstances will allow us.

7 MR. VARDEMAN: Okay. All right. I understand.

8 Okay. How many creditor groups do we have represented  
9 here? If you'll please raise your hand. Okay. I see four  
10 hands. Okay. What I'll do is I'll divide your time up ten  
11 minutes at a time and we'll go that way and see where we get  
12 from at that point.

13 I think we all sat in on the hearing the other day. I  
14 know what the issues are in this case. Please understand  
15 that the scope of the 341 is basically to find out about the  
16 Debtor's assets, liabilities, income and expenses, and their  
17 schedules. So let's please limit the questions to those  
18 items.

19 It's always ladies first. Ma'am, you're first. Your  
20 name and who do you represent?

21 MS. BROWN: Brook Brown.

22 MR. VARDEMAN: Okay.

23 MS. BROWN: And I represent the Texas and Missouri  
24 Telephone Companies.

25 MR. VARDEMAN: Do you have questions for the Debtor?

1 MS. BROWN: Yes, I do. Pull up a chair?

2 MR. VARDEMAN: You may. That would be the easiest  
3 thing to do.

4 MS. BROWN: Thank you.

5 MR. VARDEMAN: Okay. Go ahead.

6 MS. BROWN: Thank you. Mr. Wiseman and Mr. Miller,  
7 could you turn to Schedule B? And can you tell me: Are the  
8 base stations with which Halo connects with Transcom, are  
9 they shown on this Schedule B?

10 MR. WISEMAN: The base stations that Halo connects  
11 to Transcom with? The Halo base stations are leased through  
12 a company called SAT Net. So the leasing arrangements are  
13 included in the schedules, but the assets themselves are  
14 owned by a company called SAT Net.

15 MR. KEIFFER: The SAT Net reference is in Schedule  
16 G. And there is a reference at that point in Schedule G that  
17 there's an issue of whether it is or isn't a lease. We  
18 reserve that point.

19 MS. BROWN: Okay. What is the annual amount of that  
20 lease?

21 MR. MILLER: Well, the current payment terms are  
22 \$165,000 a month for 12 months.

23 MR. KEIFFER: It would be about \$1,900,000 to \$2  
24 million?

25 MR. MILLER: Right. The current --

1 MR. KEIFFER: For an annual.  
2 MR. MILLER: The current obligation --  
3 MS. BROWN: A month for nine months, did you say?  
4 I'm sorry.  
5 MR. MILLER: Twelve. Twelve months.  
6 MS. BROWN: For 12 months? And when was that --  
7 that contract was entered into June 1 of 2010?  
8 MR. MILLER: If that's what it says here, that's  
9 correct.  
10 MS. BROWN: Okay. And SAT Net is also an affiliate  
11 of the Debtor?  
12 MR. KEIFFER: Under bankruptcy definitions, we  
13 believe that to be the case.  
14 MS. BROWN: Okay. Mr. Miller, are you president of  
15 SAT Net?  
16 MR. MILLER: I am.  
17 MS. BROWN: Are you an employee of SAT Net?  
18 MR. MILLER: I am.  
19 MS. BROWN: And Ms. Malone is Secretary/Treasurer of  
20 SAT Net?  
21 MR. MILLER: She is.  
22 MS. BROWN: Are there any other common directors or  
23 owners or investors between SAT Net and Halo?  
24 MR. MILLER: There are.  
25 MS. BROWN: Who are they, please?

1 MR. MILLER: Gary Shapiro, Tim Terrell and Scott  
2 Birdwell.

3 MS. BROWN: And where are these base stations  
4 located? What is the physical address?

5 MR. MILLER: There's a schedule in the documents  
6 that lists the exact address.

7 MS. BROWN: Could you identify that for me, please?

8 MR. MILLER: Okay. Exhibit G-1 is the -- is 27 of  
9 the 28 tower site addresses. There is one additional site in  
10 Enid, Oklahoma. I don't know that we have the address listed  
11 here, but if you need the address I can provide it.

12 MS. BROWN: So is it your -- are you saying that  
13 there is a Halo-owned or operated base station at each of the  
14 addresses listed on Exhibit G-1?

15 MR. MILLER: Halo has tower leases in each of those  
16 locations --

17 MS. BROWN: That's not my question.

18 MR. MILLER: -- from which it operates the base  
19 stations which are leased from SAT Net.

20 MS. BROWN: Let me ask my question again. Are the  
21 base stations that Halo uses to connect with Transcom, are  
22 those base stations physically located at the addresses  
23 listed on G-1?

24 MR. MILLER: Yes.

25 MS. BROWN: And I believe that those tower leases



1 are also leases, right, not Halo assets?

2 MR. MILLER: Those are leases. And --

3 MR. KEIFFER: I don't know if I'm going to  
4 characterize the leases as being assets are not, but  
5 nonetheless they are leases.

6 MS. BROWN: They're not physical property owned by  
7 -- the towers are not owned by Halo?

8 MR. MILLER: That's correct.

9 MS. BROWN: They're leased?

10 MR. WISEMAN: Space on the towers are leased. The  
11 towers themselves.

12 MS. BROWN: And who are they leased by? Are they  
13 leased in Halo's name? Does Halo hold the lease?

14 MR. MILLER: Yes.

15 MS. BROWN: And who is the lessor?

16 MR. MILLER: American Tower in 27 of the locations,  
17 and SBA Communications in one of them.

18 MS. BROWN: And who is the second? I'm sorry.

19 MR. MILLER: SBA Communications. That's the one in  
20 Enid, Oklahoma.

21 MR. KEIFFER: That's the one we need to add.

22 MS. MOSES: No, it's listed.

23 MR. WISEMAN: It's listed?

24 MR. KEIFFER: In G.

25 MS. MOSES: It's just listed separately.

1 MR. KEIFFER: Yeah. Rural telephonic service. It's  
2 been out there forever.

3 MR. WISEMAN: It's a fee that any common carrier has  
4 to pay to subsidize rural services across the -- every  
5 carrier pays it.

6 MR. KEIFFER: Every carrier. Any phone bill you'll  
7 get, you'll see one.

8 MR. WISEMAN: It's not an optional thing.

9 MS. SEPANIK: So there's no contract?

10 MR. KEIFFER: Correct.

11 MR. WISEMAN: No.

12 MR. KEIFFER: I think it's statutory.

13 MR. WISEMAN: We report our --

14 MS. SEPANIK: It's statutory?

15 MR. WISEMAN: We report our revenues and they --  
16 it's like any other tax obligation. There's schedules based  
17 on your revenues. You pay the fees.

18 MR. KEIFFER: That's why it's on Schedule E, because  
19 it's a statutory obligation.

20 MS. SEPANIK: Right. Yeah.

21 MR. KEIFFER: An excise tax --

22 MS. SEPANIK: Uh-huh.

23 MR. KEIFFER: -- is what it's been characterized to  
24 be similar to.

25 MS. SEPANIK: Uh-huh.

1 MR. BENNETT: And is 100 percent of that thought to  
2 be priority?

3 MR. KEIFFER: There's -- yeah. I don't think  
4 there's any subdivision, David, for them that they've got to  
5 do part of it's priority, and what's not. I think it's just  
6 like, everything Uncle Sam has, it's all priority.

7 MR. WISEMAN: Yeah.

8 MR. KEIFFER: Okay.

9 MR. VARDEMAN: A couple of more questions.

10 MS. SEPANIK: That's it.

11 MR. VARDEMAN: Okay. Mr. Gerber, do you have any  
12 other questions?

13 MR. GERBER: If you don't mind, sir.

14 Mr. Wiseman, who do you report to in your capacity as an  
15 officer of the Debtor?

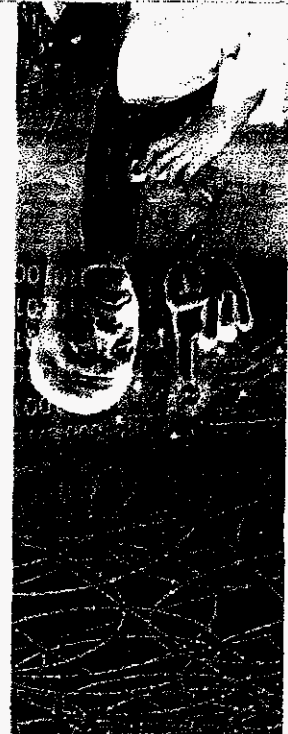
16 MR. WISEMAN: I report to a management committee of  
17 the investor-owners.

18 MR. GERBER: Okay. And who is -- who sits on that  
19 management committee?

20 MR. WISEMAN: It's Scott Birdwell, Jake Miller,  
21 Carolyn Malone. Occasionally the major investors have  
22 participated in that.

23 MR. GERBER: And who are those -- would you just  
24 name those major investors?

25 MR. WISEMAN: Tim Terrell and Gary Shapiro.



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 New York

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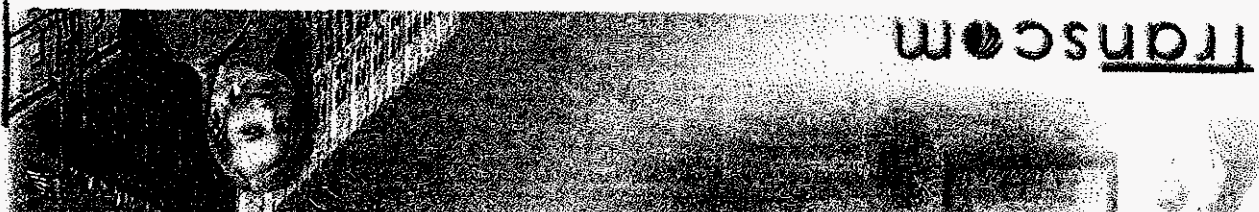
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 Transcom provides origination services using Toll Free numbers and local DIDs. Transcom will pass the originated call to the Customer using dedicated facilities or via an IP handoff. Customer can connect to the above switch locations for this product also.

**Toll Free Termination Services**  
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Our goal is to provide our customers with



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# AT&T Wholesale Agreement

Contract Number: 8792

### MFN AGREEMENT

This MFN Agreement ("MFN Agreement"), which shall be filed with and is subject to approval by the respective State Commissions, as indicated below, and shall become effective ten (10) days after approval by such Commissions ("Effective Date"), is entered into by and between Halo Wireless, Inc. ("CARRIER"), a Texas corporation on behalf of itself, and BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee, (collectively, "AT&T"), having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

**WHEREAS**, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996;

**WHEREAS**, CARRIER has requested that AT&T make available the 251/252 wireless interconnection agreement, in its entirety, executed between BellSouth Telecommunications, Inc. and T-Mobile USA, Inc., dated May 8, 2003, for the State(s) of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee (collectively "AT&T") ("Wireless Agreement");

**WHEREAS**, pursuant to Section 252(i) of the Act, for purposes of this MFN Agreement, CARRIER has adopted the Wireless Agreement for the State(s) of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee; and,

**WHEREAS**, the Parties have agreed to add an additional Whereas Clause to the Wireless Agreement, through a separate amendment to the Wireless Agreement, which the Parties are executing concurrent with CARRIER'S execution of this MFN Agreement;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of this MFN Agreement, CARRIER and AT&T hereby agree as follows:

- AT&T** shall be defined as the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.
- CARRIER and **AT&T** shall adopt, in its entirety, the Wireless Agreement, dated May 8, 2003, and any and all amendments to said Wireless Agreement, executed and approved by the appropriate State Commissions as of the date of the execution of this MFN Agreement. The Wireless Agreement and all amendments thereto are attached hereto as Exhibit 1 and are incorporated herein by this reference. The adoption of the Wireless Agreement with amendment(s) consists of the following:

ITEM
MFN Agreement
Signature Page
Exhibit 1 Cover Page
T-Mobile USA, Inc. Agreement
T-Mobile USA, Inc. Amendment - Effective March 3, 2004
T-Mobile USA, Inc. Amendment - Effective April 30, 2006
T-Mobile USA, Inc. Amendment - Effective April 21, 2008
T-Mobile USA, Inc. Amendment - Effective December 15, 2008
Whereas Clause Amendment

- In the event that CARRIER consists of two (2) or more separate entities as set forth in the preamble to this MFN Agreement, all such entities shall be jointly and severally liable for the obligations of CARRIER under this MFN Agreement.

The term of this MFN Agreement shall be from the Effective Date as set forth in the first paragraph above and shall expire as of January 7, 2011.

4. CARRIER shall accept and incorporate any approved amendments to the Wireless Agreement executed as a result of any final judicial, regulatory, or legislative action.

5. In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, State Commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review.

6.  
7. Every notice, consent or approval of a legal nature, required or permitted by this MFN Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid addressed to:

To AT&T:

Contract Management  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Dallas, TX 75202-5398  
Facsimile Number: 214-464-2006

With a Copy To:

Business Markets Attorney  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

To CARRIER:

Todd Wallace  
CTO  
3437 W. 7<sup>th</sup> Street  
Box 127  
Fort Worth, TX 76107  
Phone Number 682-551-3797  
Facsimile Number 817-338-3777  
Email: twallace@halowireless.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this MFN Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.



**Halo Wireless, Inc.**

**BellSouth Telecommunications, Inc., d/b/a  
AT&T Alabama, AT&T Florida, AT&T Georgia,  
AT&T Kentucky, AT&T Mississippi, AT&T  
North Carolina, AT&T South Carolina and  
AT&T Tennessee, by AT&T Operations, Inc.,  
their authorized agent**

By: Todd Wallace

By: Eddie A. Reed, Jr.

Name: Todd Wallace

Name: Eddie A. Reed, Jr.

Title: CTO

Title: Director-Interconnection Agreements

Date: 3-29-2010

Date: 4-5-10

**EXHIBIT 1**

**By and Between**

**BellSouth Telecommunications, Inc.**

**And**

**T-Mobile USA, Inc. f/k/a VoiceStream Wireless  
Corporation**

**INTERCONNECTION  
AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS, INC.  
AND  
T-Mobile USA, Inc.**

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**A**

**B1**

**B2**

**Affiliates**

**Local CMRS Interconnections Rates**

**Local CMRS Interconnections Rates (if applicable)**

## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia Corporation, and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corp. ("Carrier") a Delaware Corporation for and on behalf of those entities listed in Attachment A which entities T-Mobile USA, Inc. hereby represents it has authority to bind hereunder (all collectively referred to as "Carrier") and shall be deemed effective as of May 1, 2003, (the "Effective Date"). This Agreement may refer to either BellSouth or Carrier or both as a "party" or "parties."

### WITNESSETH

**WHEREAS**, BellSouth is an incumbent local exchange carrier authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, Carrier is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide CMRS in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, the parties wish to interconnect their facilities and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Carrier agree as follows:

#### I. Definitions

For purposes of this Agreement, the following capitalized terms have the meanings set forth below unless the context requires otherwise. Terms that appear herein (whether or not capitalized) that are not defined herein have the meanings ascribed to them in the Act (defined herein), or (if not defined therein) have the meanings customarily associated with them based on ordinary usage in the telecommunications industry as of the Effective Date.

**A. Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**B. Commission** is defined as the appropriate regulatory agency in each of BellSouth's nine state region: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

**C. Intermediary Traffic** is defined as the delivery, pursuant to this agreement or Commission directive, of local or toll (using traditional landline definitions) traffic to or from (i) a local exchange carrier other than BellSouth; (ii) a competitive or alternative local exchange carrier ("CLEC"); or (iii) another telecommunications carrier such as a CMRS provider other than Carrier through the respective networks of BellSouth or Carrier, and delivered from or to an end user of BellSouth or Carrier. All local or toll traffic from a local exchange carrier delivered to Carrier not originated on the BellSouth network by BellSouth is considered Intermediary Traffic.

**D. Local Traffic** is defined for purposes of reciprocal compensation under this Agreement as: (1) any telephone call that originates on the network of Carrier within a Major Trading Area ("MTA") and terminates on the network of BellSouth in the same MTA and within the Local Access and Transport Area ("LATA") in which the call is handed off from Carrier to BellSouth, and (2) any telephone call that originates on the network of BellSouth that is handed off to Carrier in BellSouth's service territory and in the same LATA in which the call originates and terminates and is delivered to the network of Carrier in the MTA in which the call is handed off from BellSouth to Carrier. For purposes of this Agreement, LATA shall have the same definition as that contained in the Telecommunications Act of 1996, and MTA shall have the same definition as that contained in the FCC's rules. Traffic delivered to or received from an interexchange carrier is not Local Traffic. Interexchange access as defined in 47 CFR Part 69 and in comparable state utility laws ("Access Traffic") is not Local Traffic.

**E. Local Interconnection** is defined for purposes of this Agreement as the connection of the parties' respective networks for the exchange and delivery of Local Traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call.

**F. Non-Local Traffic** is defined as all traffic that is neither Local Traffic nor Access Traffic, as described in section VII of this Agreement.

**G. Percent of Interstate Usage (PIU)** is defined as a factor to be applied to that portion of Non-Local Traffic comprised of interstate interMTA minutes of use in order to designate those minutes that should be rated as interstate access services minutes of use. The numerator is all interstate interMTA minutes of



use, less any interstate minutes of use for "Terminating Party Pays" services, such as 800 Services. The denominator is all interMTA minutes of use less all minutes attributable to Terminating Party Pays services.

**H. Percent Local Usage (PLU)** is defined as a factor to be applied to terminating minutes of use. The numerator is all "nonintermediary" Local minutes of use. The denominator is the total minutes of use including Local and Non-Local.

**I. Point of Interconnection (POI)** is defined as the physical geographic location(s), within BellSouth's service area within a LATA, at which the Parties interconnect their facilities for the origination and/or termination of traffic. This point establishes the technical interface, the test point(s), and the point(s) for operational division of responsibility between BellSouth's network and Carrier's network.

**J. Telecommunications Act of 1996 ("Act")** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

**K. Type 1 Interconnection** is a trunk side connection between a BellSouth end office and a Carrier's POI and provides the capability to access all BellSouth end offices within the LATA. Type 1 Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

**L. Type 2A Interconnection** are one-way or two-way facilities that provide a trunk side connection between a BellSouth tandem switch and a Carrier's POI and provides access to all BellSouth end offices and third party providers subtending the BellSouth tandem. Type 2A Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

**M. Type 2B Interconnection** are one-way or two-way facilities that provide a high usage route between a BellSouth end office and an Carrier's POI and provides access to all BellSouth NXX codes homed in that specific end office and is provided in conjunction with Type 2A Interconnection. Type 2B Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

## **II. Purpose**

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its

execution including, without limitation, the Act at Sections 251, 252 and 271. The access and interconnection obligations contained herein enable Carrier to provide CMRS in those areas where it is authorized to provide such services within the nine state region of BellSouth.

### **III. Term of the Agreement**

**A.** The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

**B.** The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

**C.** Either party's request under this Section will, for all purposes, be treated as a request under Section 252 of the Act for negotiation received by an incumbent local exchange carrier and will begin the process of voluntary negotiations. If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue in full force and effect while the Parties are within negotiation/arbitration process outlined in Section 252 of the Telecommunications Act of 1996, as may be amended. If the Section 252 process is concluded or abandoned, then this Agreement shall terminate and BellSouth shall continue to offer services to Carrier pursuant to the terms, conditions and rates set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section III.B above, and the terms of such Subsequent Agreement shall be effective as of the effective date as stated in Subsequent Agreement.

### **IV. Methods of Interconnection**

**A.** By mutual agreement of the parties, trunk groups arrangements between Carrier and BellSouth shall be established using the interconnecting facilities methods of subsection (B) of this section. Each party will use commercially reasonable efforts to construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

**B.** There are three methods of interconnecting facilities: (1) interconnection via facilities owned, provisioned and/or provided by either party to the other

party<sup>1</sup>; (2) physical collocation; and (3) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Type 1, Type 2A and Type 2B interconnection arrangements described in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may be purchased pursuant to this Agreement provided, however, that such interconnection arrangements shall be provided at the rates, terms and conditions set forth in this Agreement. Rates and charges for both virtual and physical collocation may be provided in a separate collocation agreement. Rates for virtual collocation will be based on BellSouth's Interstate Access Services Tariff, FCC #1, Section 20 and/or BellSouth's Intrastate Access Services Tariff, Section E20. Rates for physical collocation will be negotiated on an individual case basis.

C. The parties will accept and provide any of the preceding methods of interconnection. Carrier may establish a POI on BellSouth's network at any technically feasible point in accordance with the 47 CFR 51.703(b). Carrier must designate a POI at at least one BellSouth access tandem within every LATA Carrier desires to serve, or alternatively, Carrier may elect (in addition to or in lieu of access interconnection at BellSouth's access tandem) to interconnect directly at any BellSouth end office for delivery of traffic to end users served by that end office. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to Bellcore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point after Carrier implements SS7 capability within its own network. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties' respective facilities shall (i) provide the necessary on-hook, off-hook answer and disconnect supervision (ii) shall hand off calling party number ID when technically feasible and (iii) shall honor privacy codes and line blocking requests if possible. In the event a party interconnects via the purchase of facilities and/or services from the other party, it may do so though purchase of services pursuant to the other party's interstate or intrastate tariff, as amended from time to time, or pursuant to a separate agreement between the Parties. In the event that such facilities are used for two-way interconnection, the appropriate recurring charges for such facilities will be shared by the parties

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<sup>1</sup> On some occasions Carrier may choose to purchase facilities from a third party. In all such cases carrier agrees to give BellSouth 45 (forty five) days notice prior to purchase of the facilities, in order to permit BellSouth the option of providing one-way trunking, if, in its sole discretion BellSouth believes one-way trunking to be a preferable option to third party provided facilities. Such notice shall be sent pursuant to Section XXIX. In no event shall BellSouth assess additional interconnection costs or per-port charges to Carrier or its third-party provider should Carrier purchase facilities from a third party, e.g. the same charges that BellSouth would charge Carrier should it provide the service.

based upon percentages equal to the estimated or actual percentage of traffic on such facilities, in accordance with Section VI.B below.

**D.** Nothing herein shall prevent Carrier from utilizing existing collocation facilities, purchased from the interexchange tariffs, for local interconnection; provided, however, that unless otherwise agreed to by the parties, if Carrier orders new facilities for interconnection or rearranges any facilities presently used for its alternate access business in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge Carrier the lower of the interstate or intrastate tariffed rate or promotional rate.

**E.** The parties agree to provide at least a P.01 level of service and to work cooperatively in the placement and/or removal of interconnection facilities. The parties will establish trunk groups from the interconnecting facilities of subsection (A) of this section. Each party will use its best efforts to construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

**F.** The parties will use an auditable PLU factor as a method for determining the amount of traffic exchanged by the parties that is Local or Non-Local. The PLU factor will be used for traffic delivered by either party for termination on the other party's network.

**G.** Unless otherwise agreed, when the parties deliver Access Traffic from an Interexchange Carrier ("IXC") to each other, each party will provide its own access services to (and bill at its own rates) the IXC.

**H.** The ordering and provision of all services purchased from BellSouth by Carrier shall be as set forth in the BellSouth Telecommunications Wireless Customer Guide as that guide is amended by BellSouth from time to time during the term of this Agreement. The ordering and provisioning of facilities or services by a party, including, but limited to, installation, testing, maintenance, repair, and disaster recovery, shall be provided at a level of quality and care at least equal to that which it provides to itself, an affiliate, or, in the case of BellSouth supplied interconnection, at least equal to that provided by BellSouth to any other similarly situated CMRS provider having interconnection arrangement(s) with BellSouth comparable to the interconnection arrangement(s) provided to Carrier under this Agreement, unless Carrier and BellSouth specifically negotiate a different level of quality or care.

## **V. Interconnection Trunk Group Options**

### **A. One-Way Trunk Group Arrangement**

If the Parties mutually agree upon a one-way trunking arrangement, the following will apply:

BellSouth will provide and bear the cost of all one-way trunk groups to provide for the delivery of Local Traffic from BellSouth to Carrier's POI within BellSouth's service territory and within the LATA, and Carrier will provide or bear the cost of one-way trunk group(s) for the delivery of Carrier's originated Local Traffic and for the receipt and delivery of Intermediary Traffic to each BellSouth access tandem and end office at which the parties interconnect. Carrier may supply its own interconnection facilities or may purchase such facilities (a) from BellSouth pursuant to a separate agreement or tariff for this purpose, or (b) from any other third-party supplier as provided in Section IV(B).

### **B. Two-Way Trunk Group Arrangement**

If the Parties mutually agree upon a two-way trunking arrangement, the following will apply:

BellSouth and Carrier will share the cost of the two-way trunk group carrying both Parties traffic proportionally when purchased via this Agreement or the General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended from time to time. BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.

### **C. Combination Trunk Group Arrangement**

If the Parties cannot agree upon a trunk group arrangement or elect a combination arrangement, BellSouth will provide and bear the cost of a one-way trunk group to provide for the delivery of Local Traffic from BellSouth to Carrier's POIs within BellSouth's service territory and within the LATA. Carrier will provide or bear the cost of one-way or two-way trunk group(s), if two-way trunk group(s) are elected by Carrier, for the delivery of all Carrier's originated traffic, and also the delivery and receipt of Intermediary Traffic.

## **VI. Compensation and Billing**

### **A. Compensation of Local Traffic**

Each party will pay the other for terminating its Local Traffic on the other's network at the Local Interconnection rates as set forth in Attachment B-1. These rates are reciprocal for mobile-to-land and land-to-mobile calls.

#### **1. Local Traffic Measurement**

a. If Carrier has recording capability, but recording limitations that prohibits Carriers ability to determine the amount of BellSouth originated traffic (Local Traffic) terminated to Carrier over two-way multi-use facilities, BellSouth will provide to Carrier, upon Carrier's written request to the Local Interconnection Service Center (LISC), on a quarterly basis the percent of total terminating traffic to Carrier that was originated by BellSouth. Such percent will be used by Carrier to bill BellSouth for the BellSouth Local Traffic for the following quarter.

b. If Carrier has no recording capability and cannot determine the amount of traffic terminated to Carrier, a mutually agreed upon methodology for reciprocal billing percentages for local traffic will be used.

2. The exchange of the parties' traffic on BellSouth's interLATA EAS routes shall be considered Local Traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

### **B. Compensation of Facilities**

1. Where one-way trunking is used, each party will be solely responsible for the recurring and non-recurring cost of that facility up to the designated POI(s) on the terminating party's network.

2. The Parties agree to share proportionately in the recurring costs of two-way interconnection facilities.

a. To determine the amount of compensation due to Carrier for interconnection facilities with two-way trunking for the transport of Local Traffic originating on BellSouth's network and terminating on Carrier's network, Carrier will utilize the prior months undisputed Local Traffic usage billed by BellSouth and Carrier to develop the percent of BellSouth originated Local Traffic.

b. BellSouth will bill Carrier for the entire cost of the facility. Carrier will then apply the BellSouth originated percent against the Local Traffic portion of the two-way interconnection facility charges billed by BellSouth to Carrier. Carrier will invoice BellSouth on a monthly basis, this proportionate cost for the facilities utilized by BellSouth.

**C. Billing**

1. The charges for Local Interconnection are to be billed monthly and paid within thirty (30) days ("Due Date"). Usage charges will be billed in arrears.

2. Each party will pay the other for terminating its Local Traffic on the other's network, the Local Interconnection Rates set forth in Attachment B-1 or B-2, as applicable. Charges for terminating traffic will be the actual conversation minutes of use (MOUs) measured from receipt of answer supervision to receipt of disconnect supervision, with such time accumulated at the end of the billing period and rounded up to the next whole minute.

3. The Parties will use an auditable PLU factor as a method for determining whether traffic is Local or Non-Local. The PLU factor will be used for traffic delivered by either party for termination on the other party's network. The amount that each party shall pay to the other for the delivery of Local Traffic shall be calculated by multiplying the applicable rate in Attachment B-1 for each type of call by the total minutes of use each month for each such type of call. The minutes of use or portion thereof for each call, as the case may be, will be accumulated for the monthly billing period and the total of such minutes of use for the entire month rounded to the nearest minute. The usage charges will be based on the rounded total monthly minutes.

4. Billing disputes shall be handled pursuant to the terms of this section.

a. Each party agrees to notify the other party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to informally resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved party may pursue dispute resolution in accordance with the terms of this Agreement.

b. For purposes of this Section, a billing dispute means a dispute of (i) a specific amount of money actually billed by either party (ii) minutes of use (iii) facilities billed for (iv) methodology applied to calculations (v) delay in sending invoices or (vi) any

other bona fide disagreement with compensation or an invoice. The dispute must be clearly explained by the disputing party and supported by written documentation, which clearly shows the basis for disputing charges. By way of example and not by limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other undisputed amounts owed by the billed party until the dispute is resolved. Claims by the billed party for damages of any kind will not be considered a billing dispute for purposes of this Section. Once the billing dispute is resolved, the disputing party will make immediate payment of any of the disputed amount owed to the billing party or the billing party shall have the right to pursue normal treatment procedures. Any credits due to the disputing party, pursuant to the billing dispute, will be applied to the disputing party's account by the billing party immediately upon resolution of the dispute.

c. Either party may elect to withhold payment of disputed amounts. If a party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other party, then a late payment charge shall be assessed. However, no such late payment charge shall be owed with respect to any disputed amount resolved in favor of the disputing party. For bills rendered by either party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date times the late payment factor set forth in subsection 5 hereof. The Parties shall assess interest on previously assessed late payment charges only in a state where it has the authority pursuant to its tariffs.

5. Late payment fees, not to exceed 1 1/2% per month (or a lower percent as specified by an appropriate state regulatory agency) after the due date may be assessed, if undisputed charges are not paid, within thirty (30) days after the Due Date of the monthly bill. All charges under this Agreement shall be billed within one (1) year from the time the charge was incurred; previously unbilled charges more than one (1) year old shall not be billed by either party.

6. Deposit Policy. When purchasing new services from BellSouth totaling more than 10% of the monthly average of the previous three month's charges or \$500,000, whichever is less, in any one month, Carrier will be required to complete the BellSouth Credit Profile and provide information regarding



credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form, at Carrier's option, of cash, an Irrevocable Letter of Credit ( BellSouth form), Surety Bond (BellSouth form) or some other form of security. Any such security deposit shall in no way release Carrier from its obligation to make complete and timely payments of undisputed amounts of its bill. If Carrier requests to purchase new services, such security may be required by BellSouth if justified as provided herein prior to the installation or provision thereof. If, in the reasonable opinion of BellSouth based on the Creditworthiness Criteria below, the creditworthiness of Carrier has so deteriorated after the Effective Date, that its ability to timely pay undisputed charges under this Agreement is demonstrably in question BellSouth reserves the right to request additional security in the form specified above, at Carrier's option

BellSouth shall base its creditworthiness determination on only the following criteria ("Creditworthiness Criteria):

1. Change from Cash flow positive to Cash flow negative (last FYE and most recent quarter)
2. Change from EBITDA positive to EBITA negative (last FYE and most recent quarter)
3. Debt/tangible net worth 2 or better (last FYE and most recent quarter)
4. Bond rating changes from investment grade as defined by Moody's (if public debt is present)
5. D&B Paydex > 70 (1-100)
6. D&B credit risk class =or < 3
7. Customer falls from compliance with bank (or other loan provider's debt covenants)
8. No more than 2 times slow pay in the last 12 months for undisputed invoices.

Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff. Security deposits collected under this Section shall not exceed an amount not to exceed two (2) months' estimated net undisputed charges to Carrier under this Agreement. In the event Carrier fails to remit to BellSouth any security deposit requested pursuant to this Section, service to Carrier (following thirty 30 day's written notice and opportunity to cure) may be terminated and any security deposits will be applied to Carrier's account(s), provided in the event of a dispute concerning the deposit, then the Dispute Resolution section of this Agreement shall apply and Bellsouth shall not terminate service to Carrier during the pendency of this dispute for the disputed amounts.

## VII. Non-Local Traffic Interconnection

**A.** For terminating its Non-Local Traffic on the other Party's network, each Party will pay either the access charges described in paragraph (B) hereunder or the Non-Local Intermediary Charges described in paragraph (D) hereunder, as appropriate.

**B.** For originating and terminating intrastate or interstate interMTA Non-Local Traffic, each Party shall pay the other BellSouth's intrastate or interstate, as appropriate, switched network access service rate elements on a per minute of use basis, which are set out in BellSouth's Intrastate Access Services Tariff or BellSouth's Interstate Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement.

**C.** If Non-Local Traffic originated by Carrier is delivered by BellSouth for termination to the network of a third party telecommunications carrier that is uniquely identifiable ("Third Party Carrier"), then BST will bill Carrier and Carrier shall pay a \$.002 per minute intermediary\_charge for such Intermediary Traffic in addition to any charges that BST may be obligated to pay to the Third Party Carrier (collectively called "Third Party Termination Charges"). Third Party Termination Charges may change during the term of this Agreement, and the appropriate rate shall be the rate in effect when the traffic is terminated. The Parties agree the percentage of Non-Local Traffic delivered to BellSouth by Carrier shall be subject to Intermediary Charges and Third Party Termination Charges. BellSouth shall not deliver Intermediary Traffic to Carrier for termination to a Third Party Carrier, and therefore, Carrier shall not bill BellSouth any intermediary charges. Intermediary Traffic transiting BellSouth's network to Carrier is not Local Traffic and Carrier shall not bill BellSouth for Intermediary Traffic transiting BellSouth's network. In addition, Carrier shall not bill BellSouth for Traffic received by BellSouth from an interexchange carrier for delivery to Carrier.

**D.** Where technically possible to measure traffic for classifying traffic percentage's, the Parties shall utilize actual traffic measurements to classify traffic in each of the categories shown in subsection E. below. BellSouth may conduct periodic reviews of Carriers' traffic classification percentage's and shall update\_those percentages for the aforementioned traffic accordingly.

**E.** For Carrier's that have not exchanged traffic under a previous CMRS interconnection agreement with BellSouth or for traffic categories that are not technically feasible to measure, the associated **default** traffic classification percentages set forth in this subsection will be used until such time actual traffic patterns have been measured:

**Carrier originated traffic to BellSouth**

- Local Traffic - 60%
- Non-Local InterMTA InterState Traffic- .5%
- Non-Local InterMTA IntraState Traffic- .5%
- Non-Local Intermediary Only Traffic- 31.2%
- Non-Local Intermediary Plus Cost Traffic – 7.8%

**BellSouth originated traffic to Carrier**

- Local Traffic - 99%
- Non-Local InterMTA InterState Traffic -.5%
- Non-Local InterMTA IntraState Traffic -.5%

**F.** In the event Carrier activates service in a state that was not originally covered by this Agreement (“New State(s)”), and in which New State(s) no traffic classification percentages currently exist, BellSouth will apply an average, based on Carrier’s existing traffic classification percentages for the other states in which Carrier has established actual traffic measurements, to such New State(s) until such time as actual traffic percentages have been measured.

**VIII. Meet Point Billing**

**A.** Meet Point Billing (MPB), as supported by Multiple Exchange Carrier Access Billing (MECAB) guidelines, shall mean the exchange of billing data relating to jointly provided switched access calls and Intermediary Traffic. MECAB refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of Switched Access Traffic and Intermediary Traffic provided by two or more telecommunications carriers. Subject to Carrier providing all necessary information, BellSouth agrees to participate in MPB for Switched Access Traffic (as described in BellSouth’s Tariffs) and Intermediary Traffic. In the event a Third Party Carrier continues to charge BellSouth for Carriers’ Intermediary Traffic, Carrier agrees to keep BellSouth whole for such traffic as stipulated in Section VII C. above. BellSouth shall pass Electronic Message Interface (EMI) 1101 call\_records to Carrier at no charge. Depending on\_ the delivery medium selected by Carrier, appropriate charges for that delivery medium will be applied. Notwithstanding the foregoing, for purposes of MPB, where either or both of the originating or terminating carrier of Intermediary Traffic does not have MPB capability,\_Section VII C. will apply.

**B.** Information required from Carriers participating in MPB with BellSouth includes, but is not limited to:\_(1) Regional Accounting Office code (RAO), (2) Operating Company Number (OCN) per state for each entity to be billed (if an

OCN is not available for each billed entity, BellSouth will only render a bill to Carrier), (3) a unique Access Carrier Name Abbreviation (ACNA), (4) Percent Interstate Usage, (5) Percent Local Usage, (6) 800 Service Percent Interstate Usage or default of 50%, (7) Billing Interconnection Percentage, (8) a Screening Telephone Number (STN) from Carrier's dedicated NXX associated with each Trunk Group subscribed to. A default Billing Interconnection Percentage (BIP) of **0% BellSouth** and **100% Carrier** will be used if Carrier does not file with NECA to establish a BIP other than default. Carrier must support MPB for all Switched Access Traffic and Intermediary\_Traffic in accordance with Mechanized MECAB guidelines. The Parties acknowledge that the exchange of 1150 records will not be required.

**C.** MPB will be provided for Switched Access Traffic and Intermediary Traffic at the access tandem level only. Parties utilizing MPB must subscribe to access tandem level interconnections with BellSouth and must deliver all Intermediary\_Traffic to BellSouth over such access tandem level interconnections. Additionally, exchange of records will necessitate both the originating and terminating networks to subscribe to dedicated NXX codes, which can be identified as belonging to the originating and terminating network. NPA/NXX codes are presented in the Local Exchange Routing Guide (LERG) in association with a specific switch Common Language Location Identification (CLLI). Under national programming rules associated with Carrier Access Billing Systems (CABS), each CLLI is associated with a single rate center. Additionally, (i) if the Carrier has Type 2A and Non-Type 2A NPA/NXX codes associated with a single CLLI or, (ii) if the CLLI is associated with additional NPA/NXX codes with rate centers outside of BellSouth's service area or, (iii) if the Type 2A NPA/NXX code or CLLI home on a non-BellSouth SHA "00" tandem or are in a disassociated LATA, then those NPA/NXX codes and CLLI codes will not be included in MPB and Switched Access Traffic and Intermediary Traffic associated with those NPA/NXX codes will continue to be billed in accordance with the provisions of Section VII C. When converting to MPB, if Carrier has NPA/NXX codes with more than a single rate center terminating to a given CLLI, Carrier must provide BellSouth with information stating which BellSouth rate center will be associated with the CLLI. MPB is not available when the access tandem at which the Parties have interconnected does not have the capability to measure actual traffic.

**D.** In a MPB environment, when Carrier utilizes services provided by BellSouth that are necessary to deliver certain types of calls (e.g. Local Number Portability queries and 800 Data Base queries), Carrier will be billed applicable charges as set forth in BellSouth's federal or state access tariffs, as appropriate. In the alternative, Carrier may perform the appropriate database queries prior to delivery of such traffic to BellSouth.

**E.** Participation in MPB is outside the reciprocal compensation requirements of this Agreement. Under MPB, Carrier will compensate BellSouth at the rate set forth in Section VII.C of this Agreement for Carrier originated Intermediary Traffic. Meet Point Billing to IXCs for jointly provided switched access traffic will be consistent with the most current MECAB billing guidelines.

**F.** Exchange of records will begin no earlier than ninety days (90) from the later of the date the contract is signed or the date that all necessary information as defined in Section VIII.B above is provided. Once Carrier sets up MPB arrangements for Intermediary Traffic, Intermediary Traffic will be subject to only the \$.002 per minute Intermediary Charge (or such other rate ordered by the state), and Third Party Termination Charges shall not apply. Notwithstanding the foregoing, in the event a Third Party Carrier continues to charge BellSouth for Carriers' Intermediary Traffic, Carrier agrees to keep BellSouth whole for such traffic as stipulated in Section VII C. above. MPB as described in this Section VIII anticipates that Carrier will enter into interconnection or traffic exchange agreements with Third Party Carriers who terminate traffic originated by Carrier. Carrier will be liable to BellSouth for any charges, costs and fees BellSouth may incur for delivering Carrier's Intermediary Traffic.

**IX. Access To Poles, Ducts, Conduits, and Rights of Way**

BellSouth will provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth pursuant to 47 U.S.C § 224, as amended by the Act, pursuant to terms and conditions of a license agreement subsequently negotiated with BellSouth's Competitive Structure Provision Center.

**XI. Access to Telephone Numbers**

Carrier is responsible for interfacing with the North American Numbering Plan administrator for all matters dealing with dedicated NXXs. BellSouth will cooperate with Carrier in the provision of shared NXXs where BellSouth is the service provider.

**XII. Local Number Portability**

The Permanent Number Portability (PNP) database supplies routing numbers for calls involving numbers that have been ported from one local service provider to another. PNP is currently being worked in industry forums. The results of these forums will dictate the industry direction of PNP. BellSouth will provide access to the PNP database at rates, terms and conditions as set forth by BellSouth and in accordance with an effective FCC or Commission directive.

### **XIII. Access to Signaling and Signaling Databases**

**A.** BellSouth will offer to Carrier use of BellSouth's signaling network and signaling databases at BellSouth's published tariffed rates. Signaling functionality will be available with both A-link and B-link connectivity.

**B.** Where interconnection is via B-link connections, charges for the SS7 interconnection elements are as follows: 1) Port Charge - BellSouth shall not bill an STP port charge nor shall BellSouth pay a port charge; 2) SS7 Network Usage - BellSouth shall bill its tariffed usage charge and shall pay usage billed by the Carrier at rates not to exceed those charged by BellSouth; 3) SS7 Link - BellSouth will bill its tariffed charges for only two links of each quad ordered. Application of these charges in this manner is designed to reflect the reciprocal use of the parties' signaling networks. Where interconnection is via A-link connections, charges for the SS7 interconnection elements are as follows: 1) Port Charge - BellSouth shall bill its tariffed STP port charge but shall not pay a termination charge at the Carrier's end office; 2) SS7 Network Usage - BellSouth shall bill its tariffed usage charge but shall not pay for any usage; 3) SS7 Link - BellSouth shall bill its tariffed charges for each link in the A-link pair but shall not pay the Carrier for any portion of those links.

### **XIV. Network Design and Management**

**A.** The parties will work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth will provide public notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

**B.** The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.

**C.** The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls to alleviate or prevent network congestion.

**D.** Interconnection reconfigurations will have to be considered individually as to the application of a charge. Notwithstanding the foregoing, the parties do intend to charge non-recurring fees for any additions to, or added capacity to, any facility or trunk purchased. Parties who initiate SS7 STP changes may be charged authorized non-recurring fees from the appropriate tariffs.

**E.** The parties will provide Common Channel Signaling (CCS) information to one another, where available and technically feasible, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored, and the parties agree to cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between the respective networks.

**F.** For network expansion, the parties will review engineering requirements on a periodic basis and establish non-binding forecasts for trunk utilization as required by Section IV of this Agreement. New trunk groups will be implemented as stated by engineering requirements for both parties.

**G.** The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.

#### **XV. Auditing Procedures**

Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties will retain records of call detail for a minimum of nine months from which the PLU, the percent intermediary traffic, the percent interMTA traffic, and the PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the party requesting the audit. The PLU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit.

#### **XVI. Liability and Indemnification**

**A.** EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT OR IN THIS SECTION XVI, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY THE

OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.

**B.** Neither party shall be liable to the other party for any act or omission of any other telecommunications company providing a portion of a service under this Agreement.

**C.** Neither party shall be liable for damages to the other party's terminal location, Point of Interface (POI) or customer's premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent caused by a party's gross negligence, willful or intentional misconduct.

**D.** Each party shall be indemnified, defended and held harmless by the other party against any action, claim, loss, judgment, injury, liability, expense or damage (collectively "Loss") arising from the other party's acts or omissions under this Agreement, including without limitation: 1) claims for libel, slander, invasion of privacy, or infringement of copyright arising from the other party's own communications; 2) claims for patent infringement arising from combining or using the service furnished by one party in connection with facilities or equipment furnished by the other party or the other party's customer; 3) any claim, loss, or damage claimed by a customer of a party arising from services provided by the other party under this Agreement; or 4) all other claims arising out of an act or omission of the other party in the course of using services provided pursuant to this Agreement. Each party's liability to the other for any Loss, including reasonable attorney's fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

**E.** A party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such party shall not be liable to the customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such party would have charged that applicable person for the service, product or function that gave rise to such Loss and (ii) for Consequential Damages. To the extent that a party elects not to place in its tariffs or contracts such limitations of liability, and the other party incurs a Loss as a result thereof, such party shall indemnify and reimburse the other party for that portion of the Loss that would have been



limited had the first party included in its tariffs and contracts the limitations of liability that such other party included in its own tariffs at the time of such Loss.

**F.** Neither BellSouth nor Carrier shall be liable for damages to the other's terminal location, POI or other company's customers' premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a company's negligence or willful misconduct or by a company's failure to properly ground a local loop after disconnection.

**G.** Under no circumstance shall a party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data (collectively "Consequential Damages"). In connection with this limitation of liability, each party recognizes that the other party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

**H.** The party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the party receiving services hereunder against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving company's own communications, or (2) any Loss claimed by the customer of the party receiving services arising from such company's use or reliance on the providing company's services, actions, duties, or obligations arising out of this Agreement.

**I.** Notwithstanding any other provision of this Agreement, claims for damages by Carrier or Carrier's clients or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth shall not be subject to such limitation of liability.

**J.** Notwithstanding any other provision of this Agreement claims for damages by BellSouth or any other person or entity resulting from the gross negligence or willful misconduct of Carrier shall not be subject to such limitation of liability.

**K.** Neither party assumes liability for the accuracy of the data provided to it by the other party.

**L.** No license under patents (other than the limited license to use) is granted by either party to the other party or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement.

**M.** If the performance of this Agreement, or any obligation hereunder, is prevented, restricted or interfered with by reason of (i) acts of God; (ii) war, revolution, civil commotion, acts of public enemies, acts of terrorism, embargo; (iii) acts of the government in its sovereign capacity; (iv) labor difficulties, including, without limitation, strikes, slowdowns, picketing or boycotts; or (v) any other circumstances beyond the reasonable control and without the fault or negligence of the party affected, the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations are related to the performance so prevented, restricted or interfered with); provided, however, that the party so affected shall use its best efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. Nothing herein shall affect a party's right to interruption or other credits for failure or delay in performance.

**N.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

**O.** The obligations of the parties contained within this section XVI shall survive the expiration of this Agreement.

## **XVII. Modification of Agreement**

**A.** BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to Carrier any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service, or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.

**B.** If Carrier changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Carrier to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

**C.** No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

**D.** Execution of this Agreement by either party does not confirm or infer that the executing party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither party waives its rights to appeal or otherwise challenge any such decision(s) and each party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

**E.** In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Carrier or BellSouth to perform any material terms of this Agreement, Carrier or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section XX.

#### **XVIII. Taxes and Fees**

**A. Definition:** For purposes of this section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) which are imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor.

**B. Taxes And Fees Imposed Directly On Either Providing Party Or Purchasing Party.**

**1.** Taxes and fees imposed on the providing party, which are neither permitted nor required to be passed on by the providing party to its customer, shall be borne and paid by the providing party.

2. Taxes and fees imposed on the purchasing party, which are not required to be collected and/or remitted by the providing party, shall be borne and paid by the purchasing party.

**C. Taxes And Fees Imposed On Purchasing Party But Collected And Remitted By Providing Party.**

1. Taxes and fees imposed on the purchasing party shall be borne by the purchasing party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party determines that in its opinion any such taxes or fees are not payable, the providing party shall not bill such taxes or fees to the purchasing party if the purchasing party provides written certification, reasonably satisfactory to the providing party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing party, the purchasing party shall have the right, at its own expense, to contest the same in good faith, in its own name or on the providing party's behalf. In any such contest, the purchasing party shall promptly furnish the providing party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing party and the governmental authority.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

8. The purchasing party shall have the right, at its own expense, to claim a refund or credit, in its own name or on the providing party's behalf, of any such tax or fee that it determines to have paid in error, and the purchasing party shall be entitled to any recovery thereof.

**D. Taxes And Fees Imposed On Providing Party But Passed On To Purchasing Party.**

1. Taxes and fees imposed on the providing party, which are required to be passed on by the providing party to its customer, shall be borne by the purchasing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party disagrees with the providing party's determination as to the application or basis of any such tax or fee, the parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing party shall abide by such determination and pay such taxes or fees to the providing party. The providing party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes or

fees; provided, however, that any such contest undertaken at the request of the purchasing party shall be at the purchasing party's expense.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

E. **Mutual Cooperation.** In any contest of a tax or fee by one party, the other party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

## **XIX. Treatment of Proprietary and Confidential Information**

A. It may be necessary for BellSouth and Carrier, each as the "Discloser," to provide to the other party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail

records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend. Notwithstanding the foregoing, all Information in any party's possession that would constitute Customer Proprietary Network Information of the party or the parties' customers pursuant to any federal or state law or the rules and regulations of the FCC or Commission, and any Information developed or received by a party regarding the other party's facilities, services, volumes, or usage shall automatically be deemed confidential Information for all purposes, even if not marked as such, and shall be held confidential as is required for Information.

**B. Use and Protection of Information.** Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except (i) to employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information, (ii) to Recipient's attorney and other professionals under a duty to protect client confidences, and (iii) for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it, and shall use the same standard of care to protect Information as it would use to protect its own confidential information.

**C. Exceptions.** Recipient will not have an obligation to protect any portion of the Information which:

(a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

**D.** Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the Federal Communications Commission or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith. Furthermore, a Recipient may also disclose all Information it is required or ordered to disclose by law, a court, or governmental agency, as long as the Discloser has been notified of the required disclosure within a reasonable time

after the Recipient becomes aware of its requirement to disclose. The Recipient required to disclose the Information shall take all lawful measures to avoid disclosing the Information called for until the Discloser of the Information has had a reasonable time to seek and comply with a protective order issued by a court or governmental agency of competent jurisdiction that with respect to the Information otherwise required to be disclosed.

**E.** Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliates.

**F.** The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, or application which is now or may hereafter be owned by the Discloser.

**G.** Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section XIX shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

## **XX. Resolution of Disputes**

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the appropriate company representatives. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute, or to the extent that the Commission does not have jurisdiction or declines to review the dispute, then the FCC. However, each party reserves the right to seek judicial or FCC review of any ruling made by the Commission concerning this Agreement.

## **XXI. Waivers**

Any failure or delay by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

## **XXII. Assignment**

Any assignment by either party to any non-Affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent



of the other party shall be void. A party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate of the party without the consent of the other party; provided, however, that the assigning party shall notify the other party in writing of such assignment thirty (30) days prior to the Effective Date thereof. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any party under this Agreement shall be binding on all successors in interest and assigns of such party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

### **XXIII. Amendment**

This Agreement may not be amended in any way except upon written consent of the parties.

### **XXIV. Severability**

In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable, it shall be severed from the Agreement and the remainder of this Agreement shall remain valid and enforceable and shall continue in full force and effect; provided however, that if any severed provisions of this Agreement are essential to any party's ability to continue to perform its material obligations hereunder, the parties shall immediately begin negotiations of new provisions to replace the severed provisions.

### **XXV. Survival**

Any liabilities or obligations of a party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a party under the provisions regarding indemnification, confidential information, limitations of liability and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall survive expiration or termination thereof for a period of two (2) years.

### **XXVI. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state in which service is provided, without regard to its conflict of laws principles, and the Communications Act of 1934 as amended by the Act.

## **XXVII. Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

## **XXVIII. Filing of Agreement**

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Carrier shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Carrier.

## **XXIX. Notices**

**A.** Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person, via overnight mail, or given by postage prepaid mail, address to:

**BellSouth Telecommunications,  
Inc.**

675 W. Peachtree St. N.E.  
Suite 4300  
Atlanta, Georgia 30375  
Attn: Legal Dept. "Wireless "  
Attorney

**T-Mobile USA, Inc.**

**12920 SE 38<sup>th</sup> St.**  
Bellevue, WA 98006  
ATTN: General Counsel  
CC: Carrier Management

CC: Randy Ham, Director Wireless  
Interconnection

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

**B.** Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails; and by overnight mail, the day after being sent.

**C.** Except as otherwise provided in this Agreement, "writing" or "written" may mean electronic (including E-mail transmissions where receipt is acknowledged by the recipient, but excluding voice-mail), or hard copy, including by facsimile

(with acknowledgment of receipt from the recipient's facsimile machine) unless otherwise stated.

**XXX. Headings of No Force or Effect**

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**XXXI. Multiple Counterparts**

This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document. A facsimile copy of a party's execution of this Agreement shall be valid and binding upon the party and must be followed as soon as practicable thereafter by the original version of such execution.

**XXXII. Entire Agreement**

This Agreement, together with its preamble, recitals and all its Attachments (incorporated herein by this reference), all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them. Neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise, pre-printed form or other instrument, other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby. In the event of any conflict between the term(s) of this Agreement and those of an applicable tariff, the terms of this Agreement shall control.

**XXXIII. No Joint Venture**

The parties are independent contractors and nothing herein shall be construed to imply that they are partners, joint venturers or agents of one another.

**XXXIV. Remedies Cumulative**

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

**XXXV. No Third Party Beneficiaries**

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide any person not a party or proper assignee or successor hereunder with any beneficial interest, remedy, claim, liability, reimbursement, cause of action, or other privilege arising under or relating to this Agreement.

**XXXVI. References to Other Documents**

Whenever any provision of this Agreement refers to a technical reference, technical publication, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) or such documents that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) or each document incorporated by reference in such a technical reference, technical publication, or publication of industry standards. Should there be an inconsistency between or among publications or standards or if there is a bona-fide dispute as to what is the most recent version or edition, the parties shall mutually agree upon which requirement shall apply.

**XXXVII. Miscellaneous**

References to the "Term" include any extensions thereto.

**WHEREFORE**, the parties have caused this Agreement to be executed by their duly appointed representatives as follows:

**BellSouth Telecommunications, Inc.**

**T-Mobile USA, Inc.**

By: signature on file

By: signature on file

Name: Randy J. Ham

Name: Abdul Saad

Title: Assistant Director –  
Wireless Interconnection

Title: Vice President-Systems Engr. &  
Netwrk. Opns.

Date: 5/8/03

Date: 5/2/03

**Attachment A**

**AFFILIATES**

VoiceStream GSM I Operating Company, LLC  
VoiceStream GSM II Holdings, LLC  
VoiceStream Houston, Inc. fka Aerial Houston, Inc.  
VoiceStream PCS BTA I Corporation  
Cook Inlet/VS GSM IV PCS, LLC  
Powertel/Birmingham, Inc.  
Powertel/Memphis, Inc.  
Powertel/Kentucky, Inc.  
Powertel/Atlanta, Inc.  
Powertel, Inc.  
VoiceStream Tampa/Orlando, Inc. fka Aerial Tampa/Orlando, Inc.  
VoiceStream Central Communications, Inc. f/k/a Aerial Communications, \_Inc.  
Omnipoint Holdings, Inc.  
Powertel/Jacksonville, Inc.  
Eliska Wireless Venture I, Inc. f/k/a Digiph PCS, Inc.

**Attachment B-1**

CMRS Local Interconnection Rates  
(All rates are Per Minute of Use)

Effective date through June 14, 2003

Type 1 (End Office Switched)	\$ .0010
Type 2A (Tandem Switched)	\$ .0010
Type 2B Dedicated End Office)	\$ .0010

June 15, 2003 through June 14, 2004

(If such dates are applicable during the term of this Agreement)

Type 1 (End Office Switched)	\$ .0007
Type 2A (Tandem Switched)	\$ .0007
Type 2B Dedicated End Office)	\$ .0007

**Attachment B-2**

**Type 1, Type 2A, & 2B Mobile To Land Trunk Usage**  
 (All Rates are Per Voice Grade Trunk)

Mobile originated IntraMTA traffic over Type 1, Type 2A and Type 2B trunks, which terminate at BellSouth Tandems (Local or Access) and/or BellSouth End Offices, without recording capability, may be billed in either of two ways. Carrier may choose to either be billed a surrogate usage rate, on a per voice grade trunk basis, for mobile originated Traffic completed over one-way outward or two way trunks or may choose to provide Traffic data in a company prescribed format to be used for billing purposes. Carriers' provided Traffic data will be billed at the rates prescribe in Attachment B-1. If the Carrier chooses to provide Traffic data, then the detail level provided must be in accordance with BellSouth reasonable requirements. Traffic data must be provided no more that 30 days in arrears from the close of the normal billing cycle. If the Traffic data is not received in the BellSouth prescribed format in the specified time period, the surrogate usage rate set forth in this Attachment will be applied. Surrogate Usage for IntraMTA mobile originated Traffic, which terminates in BellSouth's local service area, shall be billed at a per voice grade trunk level rate as follows:

	<u>Type 1</u>	<u>TYPE 2A</u>	<u>Type 2B</u>
All BellSouth States			
Effective Date			
Thru June 14, 2003	\$13.00	\$13.00	\$13.00
June 15, 2003			
Thru June 14, 2004 (If such dates are applicable during the term of this Agreement)	\$9.10	\$9.10	\$9.10





**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
T-MOBILE USA, INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED MAY 1, 2003**

Pursuant to this Amendment, (the "Amendment"), T-Mobile USA, Inc. ("T-Mobile"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties dated May 1, 2003 ("Agreement").

WHEREAS, BellSouth and T-Mobile entered into the Agreement on May 1, 2003, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Attachment A of the Agreement is hereby deleted in its entirety and replaced with a new Attachment A as set forth in Exhibit 1 to this Amendment, incorporated herein by this reference.
2. All of the other provision of the Agreement, dated May 1, 2003, shall remain in full force and effect.
3. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**BellSouth Telecommunications, Inc.**


By: 

Name: Randy J. Ham

Title: Assistant Director -  
Wireless Interconnection

Date: 3/3/04

**T-Mobile USA, Inc.**

By: 

Name: Dave Mayo  
Vice President, Finance & Planning  
Engineering & Technical Operations

Title:

Date: 3/1/04

**ATTACHMENT A**

KNLF620	B042- C3	Biloxi-Gulfport-Pascagoula, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF621	B154 - C	Fort Walton Beach, FL	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF622	B186 - C	Hattiesburg, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF623	B246 - C	Laurel, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF624	B292 - C1	Meridian, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF618	B302 - C	Mobile, AL	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF619	B343 - C	Pensacola, FL	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLG925	B269 - F	McComb-Brookhaven, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLG369	B009 - F	Alexandria, LA	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF222	M011 - B	Atlanta, GA	Powertel Atlanta Licenses, Inc.
KNLF258	M029 - B	Birmingham, AL	Powertel Birmingham Licenses, Inc.
KNLF273	M037 - A	Jacksonville, FL	Powertel Jacksonville Licenses, Inc.
WPXE651	M015 - A6	Miami-Ft. Lauderdale, FL	Powertel Jacksonville Licenses, Inc.
WPXE650	M017 - A2	New Orleans- Baton Rouge, LA	Powertel Jacksonville Licenses, Inc.
KNLF517	B320 - A	New Orleans - Baton Rouge, LA	LA CVIS IV License Sub I, LLC
WPXE649	B152 - A	Ft. Pierce, FL	VoiceStream Tampa/Orlando, Inc.
KNLH402	B052 - D	Bowling Green-Glasgow, KY	Powertel Kentucky Licenses, Inc.
KNLH403	B052 - E	Bowling Green-Glasgow, KY	Powertel Kentucky Licenses, Inc.
KNLH416	B083 -D	Clarksville, TN	Powertel Kentucky Licenses, Inc.
KNLH417	B083 - E	Clarksville, TN	Powertel Kentucky Licenses, Inc.
KNLH408	B098 - D	Corbin, KY	Powertel Kentucky Licenses, Inc.
KNLH409	B098 - E	Corbin, KY	Powertel Kentucky Licenses, Inc.
KNLH400	B135 - D	Evansville, IN	Powertel Kentucky Licenses, Inc.
KNLH401	B135 - E	Evansville, IN	Powertel Kentucky Licenses, Inc.
KNLH398	B252 - D	Lexington, KY	Powertel Kentucky Licenses, Inc.
KNLH399	B252 - E	Lexington, KY	Powertel Kentucky Licenses, Inc.
KNLG209	B263 - D	Louisville, KY	Powertel Kentucky Licenses, Inc.
KNLH397	B263 - E	Louisville, KY	Powertel Kentucky Licenses, Inc.
KNLH412	B273 - D	Madisonville, KY	Powertel Kentucky Licenses, Inc.
KNLH413	B273 - E	Madisonville, KY	Powertel Kentucky Licenses, Inc.
KNLH406	B338 - D	Owensboro, KY	Powertel Kentucky Licenses, Inc.
KNLH407	B338 - E	Owensboro, KY	Powertel Kentucky Licenses, Inc.
KNLH404	B339 - D	Paducah-Murray-Mayfield, KY	Powertel Kentucky Licenses, Inc.
KNLH405	B339 - E	Paducah-Murray-Mayfield, KY	Powertel Kentucky Licenses, Inc.
KNLH410	B423 - D	Somerset, KY	Powertel Kentucky Licenses, Inc.
KNLH411	B423 - E	Somerset, KY	Powertel Kentucky Licenses, Inc.
KNLH420	B232 -E	Knoxville, TN	Powertel Knoxville Licenses, Inc.
KNLF255	M028 - A	Memphis-Jackson, KY	Powertel Memphis Licenses, Inc.

**CMRS0043-AMENDMENT  
EXHIBIT 1**

KNLH418	B096 - D	Cookeville, TN	Powertel Nashville Licenses, Inc.
KNLH419	B096 - E	Cookeville, TN	Powertel Nashville Licenses, Inc.
KNLH414	B314 - D	Nashville, TN	Powertel Nashville Licenses, Inc.
KNLH415	B314 - E	Nashville, TN	Powertel Nashville Licenses, Inc.
WPVN593	M015 - A4	Naples, FL	VoiceStream Houston, Inc.
KNLF978	B293 - E	Miami-Ft. Lauderdale, FL	Omnipoint Miami E License, LLC
WPXE649	M015 - A8	Miami-Ft. Lauderdale, FL	VoiceStream Tampa/Orlando, Inc.
KNLF979	B293 - F	Miami-Ft. Lauderdale, FL	VoiceStream GSM II, LLC
KNLG277	B408 - F	Sarasota-Bradenton, FL	VoiceStream GSM II, LLC.
KNLF225	M013 - A	Tampa-St. Petersburg-Orlando, FL	VoiceStream Tampa/Orlando, Inc.
KNLF980	B469 - F	West Palm Beach-Boca Raton, FL	VoiceStream GSM II, LLC
KNLG724	B469 - E	West Palm Beach-Boca Raton, FL	Omnipoint Holdings, Inc.
WPWR849	B357 - A4	Portland-Brunswick, ME	VoiceStream Tampa/Orlando, Inc.
WPXE649	B151 - A	Fort Myers, FL	VoiceStream Tampa/Orlando, Inc.
WPOJ732	B032 - C	Baton Rouge, LA	VoiceStream GSM I, LLC
KNLG288	B044 - D	Birmingham, AL	VoiceStream GSM II, LLC
KNLF968	B125 - E	El Dorado-Magnolia-Camden, AR	Omnipoint Little Rock-El Dorado E License, LLC
WPOJ734	B125 - C	El Dorado-Magnolia-Camden, AR	VoiceStream GSM I, L.L.C.
WPUD910	B147 - C3	Florence, SC	VoiceStream PCS BTA I License Corporation
KNLH746	B153 - D	Fort Smith, AR	VoiceStream PCS BTA I License Corporation
KNLG729	B152 - F	Ft. Pierce-Vero Beach-Stuart FL	Cook Inlet/VS GSM IV PCS, LLC
KNLF951	B158 - F	Gadsden, AL	VoiceStream GSM II, LLC
WPUD912	B178-C4	Greenwood, SC	VoiceStream PCS BTA I License Corporation
WPUD911	B177-C4	Greenville-Spartanburg, SC	VoiceStream PCS BTA I License Corporation
WPOJ736	B180 - C	Hammond, LA	VoiceStream GSM I, L.L.C.
KNLH748	B182 - D	Harrison, AR	VoiceStream PCS BTA I License Corporation
KNLG759	B193 - D	Hot Springs, AR	VoiceStream PCS BTA I License Corporation
KNLF504	B195 - C1-15	Houma-Thibodaux LA	CIVS IV License Sub I, LLC
KNLF952	B198 - F	Huntsville, AL	VoiceStream GSM II, LLC
KNLG810	B219 - E	Jonesboro-Paragould, AR	VoiceStream PCS BTA I License Corporation
WPOJ738	B236 - C	Lafayette-New Iberia, LA	VoiceStream GSM I, LLC
KNLG766	B257 - D	Little Rock, AR	VoiceStream PCS BTA I License Corporation
WPSF245	MTA040 -A4	Little Rock, AR	Omnipoint Holdings, Inc.
KNLF947	B271 - F	Macon-Warner Robins, GA	VoiceStream GSM II, LLC
WPOJ808	B304 - C2	Monroe. LA (C2-15)	Cook Inlet/VS GSM VI PCS, LLC
WPUD913	BTA312 - C4	Myrtle Beach, SC	VoiceStream PCS BTA I License Corporation
KNLG777	B348 - D	Pine Bluff, AR	VoiceStream PCS BTA I License Corporation
KNLH347	B367 - E	Quincy, IL-Hannibal, MO	Omnipoint Wichita-E. Hutchinson E License, LLC
KNLG779	B367 - D	Quincy, IL-Hannibal, MO	VoiceStream PCS BTA I License Corporation
KNLG830	B387 - E	Russellville, AR	VoiceStream PCS BTA I License Corporation
KNLF948	B410 - F	Savannah, GA	VoiceStream GSM II, LLC

**SECOND AMENDMENT  
TO THE  
INTERCONNECTION AGREEMENT BETWEEN  
BELLSOUTH TELECOMMUNICATIONS, INC.  
AND  
T-MOBILE USA, INC.  
DATED MAY 1, 2003**

Pursuant this Amendment, (the "Amendment") and BellSouth Telecommunications, Inc., and T-Mobile USA, Inc. hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated May 1, 2003.

WHEREAS, the BellSouth Telecommunications, Inc. and T-Mobile USA, Inc. entered into the Agreement on May 1, 2003; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to delete all references to the state of Louisiana from this Agreement.
2. The Parties agree to delete subsection A. of Section III., Term of the Agreement and replace it with the following:
  - A. The term of this Agreement shall be the Effective Date as set forth above and shall expire as of November 1, 2006. The Agreement shall apply to the BellSouth territory in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
3. The Parties agree to delete subsection C of Section III., Term of the Agreement and replace it with the following:
  - C. Either Party's request under this Section will, for purposes, be treated as a request under Section 252 of the Act for negotiation received by an incumbent local exchange carrier and will begin the process of voluntary negotiations. If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue in full force and effect, on a month-to-month basis, while the Parties are within negotiation/arbitration process outlined in Section 252 of the Telecommunications Act, as may be amended. If the Section 252 process is abandoned, then this Agreement shall automatically renew for additional six (6) month term, unless either Party provides written notice of termination to

the other Party at least sixty (60) days prior to the end of the then-current term.

4. The Parties agree to delete subsection C. of Section VII., Non-Local Traffic Interconnection and replace it with the following:

C. If Non-Local Traffic originated by Carrier is delivered by BellSouth for termination to the network of a third party telecommunications carrier that is uniquely identifiable ("Third Party Carrier"), then BellSouth will bill Carrier and Carrier shall pay a \$.003 per minute intermediary charge for such Intermediary Traffic in addition to any charges that BellSouth may be obligated to pay to the Third Party Carrier (collectively called "Third Party Termination Charges"). Third Party Termination Charges may change during the term of this Agreement, and the appropriate rate shall be the rate in effect when the traffic is terminated. The Parties agree the percentage of Non-Local Traffic delivered to BellSouth by Carrier shall be subject to Intermediary Charges and Third Party Termination Charges. BellSouth shall not deliver Intermediary Traffic to Carrier for termination to a Third Party Carrier, and therefore, Carrier shall not bill BellSouth any intermediary charges. Intermediary Traffic transiting BellSouth's network to Carrier is not Local Traffic and Carrier shall not bill BellSouth for Intermediary Traffic transiting BellSouth's network. In addition, Carrier shall not bill BellSouth for Traffic received by BellSouth from an interexchange carrier for delivery to Carrier.

5. The Parties agree to delete subsection F. of Section VIII., Meet Point Billing and replace it with the following:

F. Exchange of records will begin no earlier than ninety (90) days from the later of the date the contract is signed or the date that all necessary information as defined in Section VII.B. above is provided. Once Carrier sets up MPB arrangements for Intermediary Traffic, Intermediary Traffic will be subject to only the \$.003 per minute Intermediary Charge (or such other rate ordered by the state), and Third Party Termination Charge shall not apply. Notwithstanding the foregoing, in the event a Third Party Carrier continues to charge BellSouth for Carriers' Intermediary Traffic, Carrier agrees to keep BellSouth whole for such traffic as stipulated in Section VII.C. above. MPB as described in this Section VIII anticipates that Carrier will enter into interconnection or traffic exchange agreements with Third Party Carriers who terminate traffic originated by Carrier. Carrier will be liable to BellSouth for any charges, costs and fees BellSouth may incur delivering Carrier's Intermediary Traffic.

6. All of the other provisions of the Interconnection Agreement, dated May 1, 2003, shall remain in full force and effect.

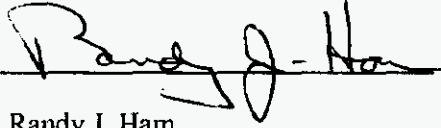
7. Either or both of the Parties is authorized to submit this Amendment to each Public Service Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.


Signature Page  
CMRS0043

IN WITNESS WHEREOF, the Parties have executed this Amendment the day and year written below.

**BellSouth Telecommunications, Inc.**

**T-Mobile USA, Inc.**

By:   
Name: Randy J. Ham  
Assistant Director -  
Title: Wireless Interconnection  
Date: 4/30/06

By:   
Name: Dave Mayo  
Title: VP Eng. + Ops. Finance + Planning  
Date: 04/30/2006

CKS

**Amendment to the Agreement  
Between  
T-Mobile USA, Inc.  
and  
BellSouth Telecommunications, Inc.,  
d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky,  
AT&T Mississippi, AT&T North Carolina, AT&T South Carolina  
and AT&T Tennessee  
Effective May 1, 2003**

Pursuant to this Amendment, (the "Amendment"), T-Mobile, USA, Inc. ("T-Mobile") and BellSouth Telecommunications, Inc., now d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties effective May 1, 2003 (the "Agreement").

WHEREAS, AT&T and T-Mobile entered into the Agreement effective May 1, 2003, and:

WHEREAS, the Parties desire to amend the Agreement in order to extend the term of the Agreement:

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The term of the Agreement shall be extended three (3) years from the date of T-Mobile's extension request to January 7, 2011.
2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
3. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties may have not yet incorporated into the Agreement or which may be the subject of further review.
4. This Amendment shall be filed with and is subject to approval by the respective State Commissions in which the Agreement has been filed and approved; this Amendment shall be effective upon approval by the respective State Commissions (the "Effective Date").

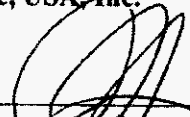


IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc. ,  
by AT&T Operations, Inc., its authorized agent.**

**T-Mobile, USA, Inc.**

By: Kathy Wilson-Chu

By: 

Name: Kathy Wilson-Chu

Name: **Dave Wang  
Vice President - Engineering  
Finance/Strategy & Development**

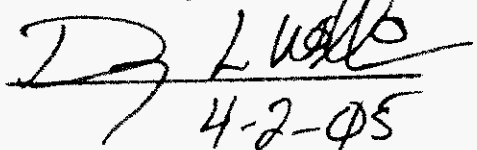
Title: Director

Title: \_\_\_\_\_

Date: 4/21/08

Date: \_\_\_\_\_

T-Mobile Legal Approval By:

  
4-2-08

**Amendment to the Agreement  
Between  
T-Mobile USA, Inc.  
and  
BellSouth Telecommunications, Inc.,  
d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky,  
AT&T Mississippi, AT&T North Carolina, AT&T South Carolina  
and AT&T Tennessee  
Effective May 1, 2003**

Pursuant to this Amendment, (the "Amendment"), T-Mobile, USA, Inc. ("T-Mobile") and BellSouth Telecommunications, Inc., now d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties effective May 1, 2003 (the "Agreement").

WHEREAS, AT&T and T-Mobile entered into the Agreement effective May 1, 2003, and:

WHEREAS, the Parties desire to amend the Agreement to update the affiliates listed in Attachment A;

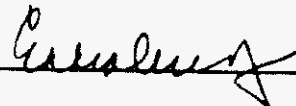
NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:


1. Delete from the Agreement Attachment A and replace with Attachment A to this Amendment, which is incorporated herein by reference:
2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
3. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties may have not yet incorporated into the Agreement or which may be the subject of further review.
4. This Amendment shall be filed with and is subject to approval by the respective State Commissions in which the Agreement has been filed and approved; this Amendment shall be effective the date of the last signature executing the amendment (the "Effective Date").


IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.,  
by AT&T Operations, Inc.,  
its authorized agent.**

**T-Mobile USA, Inc.**

By:   
Name: Eddie A. Reed, Jr.  
Title: Director - Interconnection Agreements  
Date: 12-15-08

By:   
Name: Dave Mayo  
Title: Vice President - Engineering  
Finance, Strategy & Development  
Date:

T-Mobile Legal Approval By:   
10-25-08

**Attachment A**

**AFFILIATES**

T-Mobile South LLC  
Powertel/Memphis, Inc.  
SunCom Wireless Operating Company, L.L.C.

# AT&T Wholesale Amendment

Contract Number: 8793

**AMENDMENT TO THE AGREEMENT  
BETWEEN  
HALO WIRELESS, INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC., D/B/A AT&T ALABAMA, AT&T  
FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T MISSISSIPPI, AT&T  
NORTH CAROLINA, AT&T SOUTH CAROLINA AND AT&T TENNESSEE**

This Amendment (the "Amendment") amends the Interconnection Agreement by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T") and Halo Wireless, Inc. ("Carrier"). AT&T and Carrier are hereinafter referred to collectively as the "Parties" and individually as a "Party".

**WHEREAS**, AT&T and Carrier are Parties to an Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), dated \_\_\_\_\_, \_\_\_\_; and

**NOW, THEREFORE**, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree to add the following language after the second "Whereas" clause:

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

2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
3. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
4. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
5. This Amendment shall be filed with and is subject to approval by the respective State Commissions and shall become effective ten (10) days following approval by such Commissions.

AMENDMENT - WHEREAS CLAUS AT&T-22STATE  
PAGE 2 OF 2  
HALO WIRELESS  
VERSION - 03/25/10

Halo Wireless, Inc.

BellSouth Telecommunications, Inc., d/b/a  
AT&T Alabama, d/b/a AT&T Florida, d/b/a  
AT&T Georgia, d/b/a AT&T Kentucky, d/b/a  
AT&T Mississippi, d/b/a AT&T North Carolina,  
d/b/a AT&T South Carolina, d/b/a AT&T  
Tennessee; by AT&T Operations, Inc., their  
authorized agent

By: Todd Wallace  
Name: Todd Wallace  
Title: CEO  
Date: 3-29-2010

By: Eddie A. Reed, Jr.  
Name: Eddie A. Reed, Jr.  
Title: Director-Interconnection Agreements  
Date: 4.5.10

August 12, 2011

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Room TWB-204  
Washington, DC 20554

*Ex Parte Notice*

RE: *Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Inter-carrier Compensation Regime, CC Docket No. 01-92; Federal-State Board on Universal Service, CC Docket No. 96-45*

Dear Ms. Dortch:

Halo Wireless, Inc. hereby gives notice that it met with the Commission persons identified below on August 10, 2011. The Halo representatives were Russ Wiseman, Halo's President and Chief Operating Officer, counsel Steven Thomas of McGuire, Craddock & Strother, P.C and counsel W. Scott McCollough of McCollough|Henry, P.C. The Commission participants were:

Wireline Competition Bureau: Randy Clarke, Travis Litman, John Hunter, Al Lewis, Richard Hovey, Rebekah Goodheart and Marcus Maher

Wireless Telecommunications Bureau: Joseph Levin

Enforcement Bureau: Margaret Dailey

The purpose of the meeting was to introduce Halo to the Commission, describe Halo's operations and to respond to certain assertions made by various RLECs in recent filings and meetings with the Commission in the context of the above-cited proceedings. Halo distributed the attached document that served as the basis for discussion during the meeting.

Sincerely,

  
W. Scott McCollough  
Counsel for Halo Wireless, Inc.





FCC Meeting  
Wireline Competition Bureau and Wireless  
Telecommunications Bureau  
Halo Wireless, Inc.

*Connect America Fund, WC Docket No. 10-90*

*A National Broadband Plan for Our Future, GN Docket No. 09-51*

*Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135*

*High-Cost Universal Service Support, WC Docket No. 05-337*

*Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92*

*Federal-State Board on Universal Service, CC Docket No. 96-45*

August 10, 2011



*FCC Meeting August 10, 2011*

## Agenda

- Introduce Halo representatives
- Provide FCC staff an overview of Halo Wireless, Inc.
- Address questions and allegations raised by ILECs in state complaints
- Q&A



*FCC Meeting August 10, 2011*

Halo Wireless has built an all IP network, presently in 28 markets across the U.S., using 3.65 Ghz spectrum and 802.16(e) Wi-Max wireless access technology

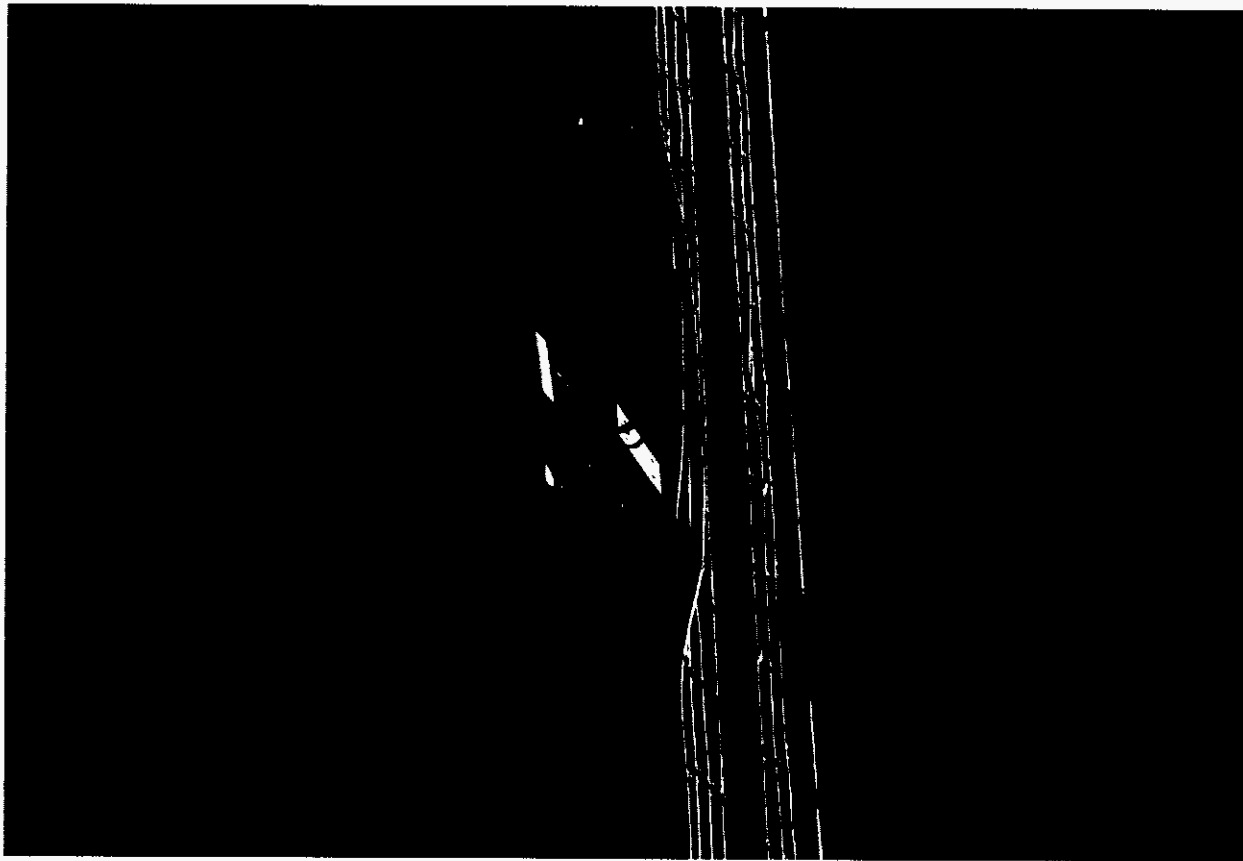
MTA	Tower Locations
LA	Amargosa Valley, NM
San Francisco	Tulare, CA
Chicago	Danville, IL
Detroit	Britton, MI
Charlotte	Orangeburg, SC
Dallas-Fort Worth	Tyler, TX
Atlanta	Cartersville, GA
Tampa-Orlando	Palm Coast, FL
Houston	Brenham, TX
Southeast FL	Bonita Springs, FL
New Orleans	Hammond, LA
Cleveland	Huntsburg, OH
Cincinnati-Dayton	Wilmington, OH
St Louis	Wentzville, MO

MTA	Tower Locations
Milwaukee	New Glarus, WI
Louisville	Paducah, KY
Memphis-Jackson	Greenville, MS
Birmingham	Graysville, AL
Indianapolis	Portland, IN
San Antonio	Pleasanton, TX
Kansas City	Junction City, KS
Jacksonville	Green Cove Springs, FL
Columbus	Carroll, OH
Little Rock	Van Buren, AR
OKC	Henryetta, OK
Nashville	Gainesboro, TN
Knoxville	Amherst, TN
Tulsa	Enid, OK



*FCC Meeting August 10, 2011*

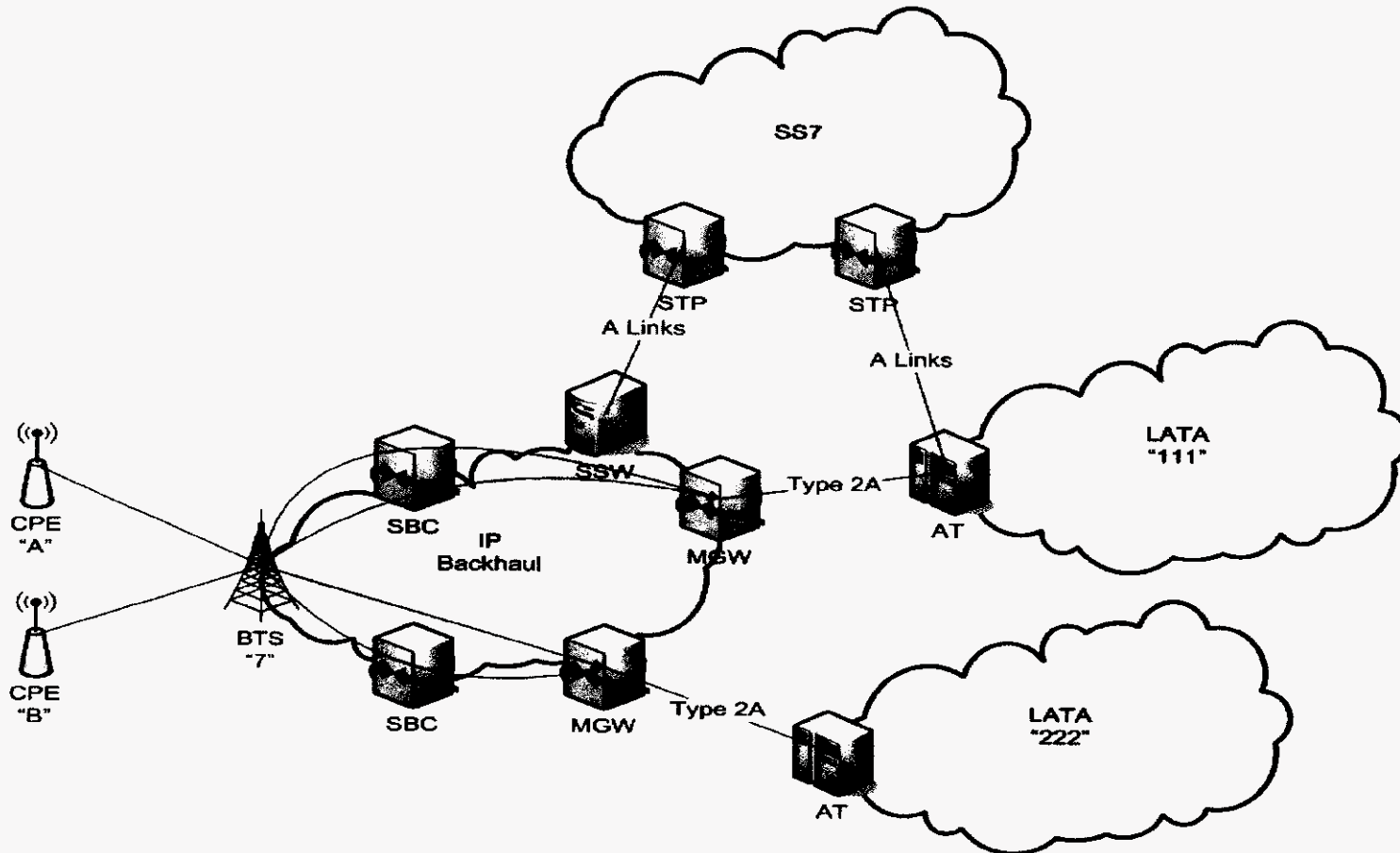
Halo Wireless has invested substantial capital in its 3.65 Ghz  
WiMax 802.16(e) wireless network.





FCC Meeting August 10, 2011

Halo Wireless's core network is all IP from customer wireless access points up through the IP-TDM conversion for ILEC traffic exchange.\*





*FCC Meeting August 10, 2011*

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

- ① Broadband wireless mobile voice and data services to retail consumers and small businesses in under served rural communities throughout the U.S.
  - Voice service currently requires soft client running on laptop.
    - Awaiting FCC certification on Airpsan USB device.
    - Testing integrated 3.65/WiFi access points for enhanced mobility.
    - Evaluating iPhone/Android smart phone clients.
  - Hundreds of thousands of marketing dollars spent to date; small base of retail customers acquired, with continued efforts to expand base underway.

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

- ② Common Carrier wireless exchange services to ESP and enterprise customers.
  - One primary customer; other arrangements under development
  - Customer connects wirelessly to Halo base stations in each MTA. All traffic traversing interconnection arrangements originates from customer with wireless link to base station in same MTA.
  - Halo transmits intelligence of the customer's choosing.
- Operating Rules and Requirements:
  - o Must obtain interconnection agreements with ILECs to enable traffic exchange across wide footprint, starting with principal ILEC that operates primary tandems.
  - o Only traffic destined to telephone exchange in the same MTA in which the tower resides is accepted for termination over this link; all other traffic is routed to an IXC for handling, and exchange access charges are paid.



*FCC Meeting August 10, 2011*

Halo's detractors are railing at the rules, but blaming Halo.

Are Halo's services CMRS?

- Halo's small volume customers can make and receive calls using soft clients on laptop computers or tablets connected to mobile/nomadic CPE. While not as elegant as a mobile phone, these services are functionally equivalent to that where traditional handset is used.
- Halo's high volume service offering is also CMRS, as the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See, In Re Atlantic Richfield Co., 3 FCC Rd. 3089 (1988), aff'd PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).*





FCC Meeting August 10, 2011

Halo's detractors are railing at the rules, but blaming Halo.

Is Halo's traffic local IntraMTA?

- The origination point for Halo traffic is the base station to which Halo's customers connect wirelessly.
- Halo is transmitting, between or among points specified by the user, information of the user's choosing.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See, In Re Atlantic Richfield Co., 3 FCC Rd. 3089 (1988), aff'd PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).*
- Halo's voice service is entirely within the MTA, and is therefore telephone exchange service, not telephone toll.
- Halo does not provide roaming.

Halo's detractors are railing at the rules, but blaming Halo

Halo's signaling practices follow industry standards and comply with the FCC's proposed "Phantom Traffic" rules

- Halo connects to the customer using WiMax, an IP-based technology fully capable of supporting native SIP communications.
- Halo locates the SIP header information corresponding to the Calling Party Number and populates the address in the SS7 ISUP IAM CPN parameter address signal location. Halo does not change or manipulate this information in any way; it is protocol converted and populated without change.
- Since Halo's customer is the responsible party, Halo also populates the SS7 Charge Number parameter with a Halo number corresponding to the customer's BTN for that MTA.
- The FCC's proposed phantom traffic rules would require precisely the practices Halo has adopted.

## Halo's detractors are railing at the rules, but blaming Halo. RLEC Interconnection Activities

- Halo has accepted proper requests for interconnection from almost 50 RLECs, and the parties are currently in § 252 negotiations. Halo is paying interim compensation to those carriers.
- The RLECs where we have disputes:
  - Do not like the “no compensation if no contract or request for interconnection” result prescribed in *T-Mobile*, and criticize Halo for relying on that result.
  - Refuse to follow rule 20.11(e) requiring them to both “request interconnection” and “invoke the negotiation and arbitration procedures contained in section 252 of the Act.” We believe they are motivated by desire to receive very high non-TELRIC prices for termination and are concerned that if they “request interconnection” they may have to interconnect via IP.
  - Are misusing the “§ 252 process” to challenge and limit Halo’s activities pursuant to federal permissions.
- Their desired result is to deem Halo’s traffic as subject to access charges, not § 251(b)(5), and classify Halo as an IXC rather than a CMRS provider.
  - Statutory service definitions and FCC precedent do not support these outcomes.

## The issues raised by the RLECs fall exclusively within the FCC's jurisdiction, and are not suitable for state commissions

- Neither Congress nor the Commission have delegated enforcement of § 332 and rule 20.11 to the states.
  - The states have delegated power to conduct arbitrations, but only for topics covered by § 251 (unless the parties voluntarily consent to negotiate without regard to standards in the Act).
- Halo continues to be prepared to negotiate, and if necessary arbitrate, for interconnection agreements implementing the mandatory topics.
  - The debate is not about how to implement the RLECs' § 251(a), (b) and/or (c) duties. Rather, the RLECs are challenging CMRS' right to enter the market with a new business model and compete directly with the incumbents for telephone exchange and exchange access service.
- Only the FCC can decide whether an activity is or is not "wireless" or "CMRS"; and the FCC has already decided when a CMRS service constitutes "telephone exchange service" vs. "telephone toll."
  - The scope and nature of "permitted activities" under a nationwide FCC license is not a proper topic for state-level arbitration.
  - One nationwide license cannot have 50 variations, and cannot be subjected to 50 state-level cases and 50 state-level re-hearings of FCC decisions.



*FCC Meeting August 10, 2011*

Thank you for your time.

October 17, 2011

Written Ex Parte; Via Electronic FilingMarlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554

RE: *Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Board on Universal Service, CC Docket No. 96-45*

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206 of the Commission's rules, Halo Wireless, Inc. ("Halo") respectfully submits this written *ex parte* communication into the above-captioned proceedings. This letter responds to the submission of the Eastern Rural Telecom Association ("ERTA") dated October 14, 2011.<sup>1</sup>

ERTA's submission makes a number of false representations of material fact, and mischaracterizes Halo and its traffic. The allegations that Halo is engaging in some kind of fraud, is refusing in any way to compensate ILECs for termination, and is sending "phantom traffic" or "laundering traffic" are all completely baseless. ERTA members are entitled to their own opinions, but they are not entitled to their own facts. Apparently, they believe that repeated prevarication somehow makes it all true. The Commission, however, cannot engage in this kind of magical thinking.

Halo is a CMRS provider. As such, it can and does provide "telephone exchange service."<sup>2</sup> Halo has authority from this Commission to provide CMRS-based telephone exchange service to any "end user" business customer that has its own wireless CPE and connects to Halo in an MTA, thereby obtaining the ability to originate and receive calls within that MTA. The service arrangement at issue uses new technology, but it is functionally the same as what an ILEC provides to a business customer with a PBX. This is merely a new and promising wireless telephone exchange service to end users. The other thing ERTA refuses to acknowledge is that Halo also has consumer customers that are presently enjoying 4G wireless broadband in *rural* areas. We thought the Commission *wanted* CMRS to compete with the ILECs and to deploy

<sup>1</sup> Available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021714450>.

<sup>2</sup> See *Local Competition Order* ¶¶ 1004, 1006, 1008.

wireless broadband to consumers. Were all of the statements to this effect in countless reports and orders not the true sentiment and goal?

Halo's "high volume" customer is an end user, not an IXC. Two different courts – in four separate opinions – have so held. Those courts held that Halo's "high volume" customer is fully entitled to purchase telecommunications service as an end user, and cannot be compelled to subscribe to the ILECs' exchange access tariffs. *See Transcom Enhanced Services, LLC Written Ex Parte* (October 11, 2011).<sup>3</sup> Halo is providing "end user" telephone exchange service to Transcom. Every Halo-related call that the ILECs are terminating is originated by Transcom using wireless CPE in the same MTA. This traffic is *not* exchange access traffic. It is, as a matter of law, subject to § 251(b)(5), since it is intraMTA and "non-access."

Further, this traffic is not "phantom traffic." The RLECs receive sufficient signaling information to identify and bill the appropriate provider."<sup>4</sup> All Halo traffic contains address signal content in both the CPN and CN parameters. Neither Halo nor Transcom manipulate or change CPN address signal content. Halo does populate the CN with a Halo number, but that is perfectly in accord with industry standards. This is exactly what any ILEC would do when serving a business user that has an ISDN PRI PBX and originates a call from a station with an identifier other than the Billing Telephone Number ("BTN") associated with the PBX system. The RLECs can obviously identify both the end user customer originating the call (Transcom) and the "responsible carrier" (Halo). They know the entity from whom they may seek *reciprocal compensation*: Halo.

Since Halo and the ERTA members do not at present have an interconnection agreement, and since all of the traffic involved is "non-access,"<sup>5</sup> the applicable compensation regime is "no compensation." This is exactly the express result imposed by the Commission in *T-Mobile*.<sup>6</sup> *T-Mobile* also provides a remedy. If the ERTA members wish to be paid reciprocal compensation then all they need to do is notice Halo that they "request interconnection" and desire to "invoke the negotiation and arbitration procedures contained in section 252 of the Act." From and after receipt of that notice the ERTA members will be entitled to reciprocal compensation, under the Commission's "interim" rules. *See* 47 C.F.R. § 20.11(e).

Halo is already paying reciprocal compensation to over 50 ILECs. More than 50% of Halo's monthly operating expense is related to these payments. ERTA's assertion that Halo

<sup>3</sup> Available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021713675>.

<sup>4</sup> *See* NPRM and FNPRM, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, FCC 11-13, ¶ 37 and note 719, 26 FCC Rcd 4554 (Feb. 9, 2011) ("*2011 ICC NPRM*") (defining "phantom traffic" as "unidentifiable and unbillable" because the terminating provider cannot "identify and bill the appropriate provider.")

<sup>5</sup> *See* 47 C.F.R. § 20.11(d).

<sup>6</sup> Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile*"). Note 57 expressly provides that "Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination."

refuses to pay anything is flatly incorrect. They simply will not follow the rules or use the remedy given to them. When they use the *T-Mobile* remedy they will be paid reciprocal compensation from and after the date of a 20.11(e)-compliant notice.

The ERTA members, however, are not satisfied with the prospect of payment that “merely” recovers “a reasonable approximation of the additional costs of terminating” these calls. *See* § 252(d)(2)(A)(ii). Instead, they desire payment in the form of exchange access, and for every minute regardless of whether they have invoked § 20.11(e). In order to accomplish this result they have engaged in a campaign of repeated defamation of both Halo and its “high volume” end user customer before state commissions and the FCC. They falsely and incorrectly claim that Halo is not “really” CMRS”; the calls are not “really wireless” and Halo’s customer is “really” just an IXC. They also constantly repeat scurrilous and unsupported claims that Halo and/or its “high volume” customer are engaging in signaling improprieties.

The bottom line is that they are simply not telling the truth, and they refuse to accept what the Act and rules require. The Commission cannot and should not accept their characterizations or reward them for their misdeeds by trying to impose exchange access on what is clearly telephone exchange service traffic. When ERTA truly wants to be paid for terminating calls, all they have to do is use the 47 C.F.R. § 20.11(e) remedy the Commission gave them. They should be sending “requests for interconnection” to Halo instead of engaging in *ex parte* communications that would violate 47 C.F.R. § 1.17 if proffered in an adjudicatory proceeding as part of their illicit attempts to recover amounts they are not due.

Respectfully Submitted

  
W. Scott McCollough  
Counsel for Halo Wireless, Inc.



PSC REF#:160528

**Transcript of Proceedings - February 28, 2012  
Volume 2 - Technical Session**

Public Service Commission of Wisconsin  
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BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

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INVESTIGATION INTO PRACTICES OF )  
HALO WIRELESS, INC., and TRANSCOM ) Docket No.  
ENHANCED SERVICES, INC. ) 9594-TI-100  
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EXAMINER MICHAEL E. NEWMARK, PRESIDING

TRANSCRIPT OF PROCEEDINGS

FEBRUARY 28, 2012

VOLUME 2

TECHNICAL SESSION

Reported By:  
JENNIFER M. STEIDTMANN, RPR, CRR  
Gramann Reporting, Ltd.  
(414) 272-7878

HEARING HELD:  
February 28, 2012  
Madison, Wisconsin  
9:30 a.m.

TRANSCRIPT PAGES:  
1 - 141,  
151 - 307, Incl.

EXHIBITS:  
Prefiled; J.S. McPhee  
5; T. McCabe 17; L.  
Robinson 13

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1 Transcom's business telephone number, their BTN, no  
2 business reason possible whatsoever, can't even  
3 imagine?

4 A Well, Halo admitted that they did it. As far as  
5 their business reason, I can only assume that they  
6 did it to disguise the call as a local intraMTA  
7 wireless in the middle call because the originator of  
8 the call was in some distant state or other calling  
9 area.

10 Q Okay. Well, let's go back to our hypothetical a  
11 little bit ago. I'm that guy at home, work at home  
12 tunnelling into a network and signaling my wireless  
13 number. You with me? Do you remember that  
14 hypothetical?

15 A I do.

16 Q In this instance, the ISDN PRI that the tire company  
17 gets from AT&T Wisconsin signals its charge number  
18 given by AT&T.

19 A Okay.

20 Q Now, when AT&T passes that on, you'll have a wireless  
21 number in the CPN and a wireline number in the charge  
22 number, right?

23 A In that hypothetical you would.

24 Q Now, when AT&T passes that on, are they doing that to  
25 deceive the terminating carrier?

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- 1 A No. Because the PBX customer is the one that's  
2 responsible for any long distance charges, and that's  
3 what the charge number is designed for.
- 4 Q Well, let's assume the ISDN PRI operator doesn't even  
5 populate the charge number information element.  
6 Doesn't put anything in there at all. It's empty  
7 when it goes up the D-channel to AT&T.
- 8 A Okay.
- 9 Q You with me?
- 10 A Okay.
- 11 Q AT&T's going to populate the charge number, isn't it?  
12 A That's in the translations.
- 13 Q Because the CPN is different than the trunk?
- 14 A Well, it's only if that customer, when they  
15 subscribed to the PRI service, requests a charge  
16 number and a billing telephone number to be used.
- 17 Q And as you just testified, the purpose of that is to  
18 tell the world who the responsible party is, this  
19 tire company, right?
- 20 A That's what the industry has decided to do.
- 21 Q Well, isn't it just possible that Halo is telling the  
22 world that the responsible party was Transcom?
- 23 A I believe that they did, but I also believe that the  
24 FCC has shot that argument down.
- 25 Q Well, they may have, but I mean, you say here the

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1           only reason was to disguise.

2       A     In my experience --

3                       MR. FRIEDMAN:  There's no question.

4       BY MR. MCCOLLOUGH:

5       Q     Okay.  You say in here the only reason was to  
6            disguise, to deceive.  Isn't it at least possible  
7            that Halo was telling the world, responsible party's  
8            Transcom, here's your billing telephone number?  
9            Isn't that possible?

10      A     It seems far-fetched, but I suppose in some world it  
11            might be.

12      Q     Generally when people are out there trying to  
13            deceive, they're hiding something, aren't they?

14      A     I believe that's true.

15      Q     How is signaling additional information specifically  
16            identifiable to a particular customer hiding  
17            something?

18      A     When it's not the original customer, it's some sort  
19            of deception.

20      Q     That's Halo's customer?

21      A     It may or may not be Halo's customer, but it has  
22            nothing to do with the originator of the call.

23      Q     Granted, granted.  Now, you understand Halo took the  
24            position all along, even before the FCC order, based  
25            on our reading of all the rules, we thought Transcom

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1 was the originating party. You understand we took  
2 that position, right?

3 A I've read that.

4 Q Okay. And the FCC disagreed on November 18th?

5 A I've read that, too.

6 Q So just in terms of intent, isn't it at least  
7 possible that what Halo was saying is I've got an end  
8 user customer and I'm going to act much like AT&T  
9 does when it has an ISDN PBX customer with PRI and,  
10 you know, if the charge numbers -- I mean, if the CPN  
11 doesn't signify, quote, the people we think to be the  
12 responsible party, we're going to signal it and  
13 charge them?

14 MR. FRIEDMAN: I'm going to object on two  
15 grounds. One is it was asked, albeit in a slightly  
16 different form, and already answered. Second is  
17 it's cumulative and argumentative. The testimony  
18 says what it says. Counsel has made his point. I'm  
19 not sure how much use it would be to the Commission  
20 to have further debate on this.

21 EXAMINER NEWMARK: Sustained.

22 BY MR. McCOLLOUGH:

23 Q Page 8 of your direct --

24 MR. McCOLLOUGH: And by the way, Your  
25 Honor, if we get to a stopping point that's

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1 also have AT&T wireless services, and I got a neat  
2 little Android phone and I'm running a VoIP client on  
3 there.

4 A Okay.

5 Q I can configure that to signal the TDS assigned  
6 number, can't I?

7 A You probably could.

8 Q Did you discount that for purposes of your study?

9 A There's no way to count that. That's why the  
10 industry and AT&T supports FCC to write new rules to  
11 compensate for the technological changes that have  
12 occurred over the last 10, 15 years. The rules are  
13 what the rules are. They're changing, but we can  
14 only run through the regulations that were in place  
15 during the time of this agreement, which is what we  
16 were doing.

17 Q So really what we got here is a deeming exercise,  
18 isn't it? You're deeming these to be wireline  
19 originated --

20 A Not --

21 Q -- in a rate center where the number's associated.  
22 You don't know how the LEC call really is originated  
23 there, do you?

24 MR. FRIEDMAN: Your Honor, I'm going to  
25 make an objection, if I may. And the objection is

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1 the line of question is becoming cumulative and a  
2 waste of time for the following reasons. As the  
3 witness testified, the exact percentage of  
4 landline-originated traffic that Halo is sending  
5 AT&T is really here nor there, and nibbling around  
6 the edges of it, at least for purposes of this case,  
7 at least from AT&T's point of view, makes -- is a  
8 waste of time.

9 Halo has not denied that it in effect does  
10 deliver substantial volumes of traffic to AT&T that  
11 starts out on landline equipment. Halo of course  
12 argues that it's originated elsewhere, but it really  
13 is uncontested that Halo, notwithstanding the  
14 parties' interconnection agreement, is handing off  
15 to AT&T Wisconsin substantial volumes of traffic of  
16 the sort that's depicted there and makes no  
17 particular effort to avoid doing that.

18 So I respectfully leave it to Your Honor  
19 how much more time is worth spending arguing about  
20 what in effect is going to amount to whether it's 40  
21 percent or 38 percent or 36 percent, but that's the  
22 objection. I suggest it's a waste of time.

23 EXAMINER NEWMARK: Response.

24 MR. McCOLLOUGH: Well, in response to  
25 Mr. Wiseman's testimony, he said okay, I'll just

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1           adjust down the number. You know, that's what the  
2           witness said. My point, Your Honor, is, you know, I  
3           had to sit here and cross-examine this guy, and he'd  
4           say, okay, well, I can fix that by changing the  
5           number and add to that an amount that supposedly  
6           wireline originated would go down and down and down.  
7           At some point that would get mighty small.

8                        He's acknowledged that even the TDS  
9           numbers that showed up might well have been  
10          originated on a wireless unit using an ESP, Skype,  
11          going to another ESP, we say Transcom and to Halo.  
12          And our contention is that's originating with Halo,  
13          and I don't think no matter how many times you read  
14          those two paragraphs, the FCC said it is not. What  
15          they were talking about is traffic that does  
16          originate on other carriers' networks.

17                       Now, is it true that Halo has said, sure,  
18          some of these calls may have started somewhere else,  
19          but if you read the rebuttal, what Mr. Wiseman said  
20          was we built our business plan reading these FCC  
21          rules and, oh, by the way, not just the FCC, the  
22          Court of Appeals decisions out of the D.C. Circuit  
23          that said ESPs are end users and originate calls.

24                       I just want to make sure that the  
25          Commission understands that you can't always put



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1 these things in these old wireline boxes. If this  
2 state wants to advance into the new technological  
3 world --

4 EXAMINER NEWMARK: Okay. Hang on. Oh,  
5 whoa, whoa. Hang on. I'll sustain the objection  
6 because I think the Commission does have enough in  
7 the record right now for that purpose.

8 MR. MCCOLLOUGH: We'll move on.

9 EXAMINER NEWMARK: Let's go off the record  
10 for a minute.

11 (Discussion held off the record.)

12 BY MR. MCCOLLOUGH:

13 Q Page 12, line 16.

14 A Are we in direct or rebuttal?

15 Q This is still your direct, sir. Is there a technical  
16 reason a carrier would want to deliver calls to Halo  
17 before they were terminated to AT&T. Who's the  
18 carrier that you're referring to there?

19 A The carriers that were originating these calls.

20 Q So are you saying that Halo is serving all those  
21 carriers that originated calls?

22 A I believe the arrangement that Halo has testified to  
23 is that Transcom has customers who are carriers that  
24 Halo advanced calls to Halo that terminates to AT&T  
25 and to others.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 26, 2012**

**IN RE:**

**BELLSOUTH TELECOMMUNICATIONS LLC D/B/A AT&T  
TENNESSEE V. HALO WIRELESS, INC.**

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)  
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**DOCKET NO.  
11-00119**

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**ORDER**

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This matter came before Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2012 for consideration of the *Complaint* filed by BellSouth Telecommunications, LLC d/b/a AT&T Tennessee (“AT&T”) against Halo Wireless, Inc. (“Halo”) and Halo’s *Motion to Dismiss Complaint With Prejudice*.

**TRAVEL OF THE CASE**

On July 26, 2011, AT&T filed a *Complaint* against Halo, pursuant to 47 U.S.C. § 252 and TRA Rule 1220-1-2-.02, requesting that the TRA issue an order “allowing it to terminate its wireless Interconnection Agreement (“ICA”) with Halo based on Halo’s material breaches of that ICA.”<sup>1</sup> The *Complaint* also states that AT&T “seeks an Order requiring Halo to pay AT&T Tennessee the amounts Halo owes” as a result of “an access charge avoidance scheme.”<sup>2</sup> On August 10, 2011, Halo filed a Suggestion of Bankruptcy informing the TRA that “on August 8, 2011 Halo filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in the

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<sup>1</sup> *Complaint*, p. 1 (July 26, 2011).

<sup>2</sup> *Id.*

United States Bankruptcy Court for the Eastern District of Texas (Sherman Division)” (“Bankruptcy Court”).<sup>3</sup> Accordingly, Halo stated, “the automatic stay is now in place” and “prohibits further action against [Halo] in the instant proceeding.”<sup>4</sup>

On August 19, 2011, Halo filed a notice of removal to federal district court, which references a separate notice of removal and states that this matter has been removed to the United States District Court for the Middle District of Tennessee, Nashville Division (“District Court”) “pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure.”<sup>5</sup> On November 10, 2011, AT&T filed a letter informing the TRA that it may now hear this matter, the District Court having remanded it to the TRA and the Bankruptcy Court having lifted the automatic stay on a limited basis. AT&T requested that this matter be placed on the agenda for the Authority Conference scheduled for November 21, 2011 “for appointing a Hearing Officer and other action as necessary.”<sup>6</sup> On November 17, 2011, Halo filed a *Motion to Abate*, in which Halo requested that the TRA “abate” this proceeding until conclusion of Halo’s appeal of the Bankruptcy Court’s October 26, 2011 Order to the United States Court of Appeals for the Fifth Circuit.

At the regularly scheduled Authority Conference held on November 21, 2011, the Authority voted unanimously to deny the *Motion to Abate* and to convene a contested case in this matter and appoint Chairman Kenneth C. Hill as Hearing Officer to handle any preliminary matters, including entering a protective order, ruling on any intervention requests, setting a procedural schedule, and addressing other preliminary matters.<sup>7</sup> Immediately following the Authority Conference, the Hearing Officer convened a scheduling conference in this matter.

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<sup>3</sup> *Suggestion of Bankruptcy*, p. 1 (August 10, 2011).

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Notice of Removal to Federal Court*, p. 1 (August 19, 2011).

<sup>6</sup> Letter from Joelle Phillips to Chairman Kenneth C. Hill (November 10, 2011).

<sup>7</sup> *Order Denying Motion to Abate, Convening a Contested Case and Appointing a Hearing Officer* (December 19, 2011).

On December 1, 2011, Halo filed *Halo Wireless, Inc.'s Partial Motion to Dismiss and Answer to the Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Tennessee* (“*Partial Motion to Dismiss*”), and AT&T filed its response to Halo’s motion on December 8, 2011. The Hearing Officer heard arguments from AT&T and Halo (collectively, “the Parties”) on the *Partial Motion to Dismiss* on December 12, 2011, and issued an order denying the *Partial Motion to Dismiss* on December 16, 2011.<sup>8</sup> The Parties submitted pre-filed direct testimony of their witnesses on December 19, 2011, and pre-filed rebuttal testimony on January 3, 2012. In addition, the Parties submitted pre-hearing memoranda on January 6, 2012.

**MOTION TO DISMISS COMPLAINT WITH PREJUDICE**

After business hours on Friday, January 13, 2012, Halo filed *Halo Wireless, Inc.'s Notice of May 16, 2006 Order Confirming Plan of Reorganization of Transcom Enhanced Services and Motion to Dismiss Complaint With Prejudice* (“*Motion to Dismiss Complaint With Prejudice*”). At the beginning of the Hearing on January 17, 2012, Chairman Hill addressed the *Motion to Dismiss Complaint With Prejudice*, giving AT&T an opportunity to respond and setting the matter for consideration during the January 23, 2012 Authority Conference. AT&T filed *BellSouth Telecommunications, LLC dba AT&T Tennessee's Response to Halo Wireless, Inc's Motion to Dismiss Complaint With Prejudice* (“*Response*”) on January 19, 2012.

As more fully explained in the discussion of AT&T’s *Complaint* below, Halo’s business plan is centered on their assertion that Transcom Enhanced Services, Inc. (“Transcom”) is an Enhanced Service Provider (“ESP”). In its *Motion to Dismiss Complaint With Prejudice*, Halo requests that the TRA dismiss AT&T’s *Complaint* with prejudice on the grounds that during

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<sup>8</sup> *Order Denying Motion to Dismiss* (December 16, 2011).

Transcom's 2005 bankruptcy proceeding,<sup>9</sup> BellSouth/AT&T Corporation were creditors/parties in interest.<sup>10</sup> In the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion, the Court concluded that "[Transcom]'s service is an enhanced service, not subject to payment of access charges."<sup>11</sup> Some of the creditors appealed the April 28, 2005 order to the United States District Court for the Northern District of Texas, Dallas Division ("Transcom District Court"), but the Transcom District Court dismissed the appeal as moot and vacated the bankruptcy court's Order and Memorandum Opinion.<sup>12</sup> However, the Transcom Bankruptcy Court entered an order on May 16, 2006 confirming Transcom's bankruptcy plan.<sup>13</sup> In this Confirmation Order, the Transcom Bankruptcy Court again stated that Transcom's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end-user charges.<sup>14</sup> No creditor appealed the May 16, 2006 Order.<sup>15</sup> Halo argues that because this Confirmation Order is binding, AT&T cannot challenge Transcom's status as an ESP.<sup>16</sup> In addition, Halo asserts that *res judicata* or collateral estoppel bars the claims that have been litigated in the bankruptcy court.

To assert a *res judicata* defense, a party must establish: 1) the parties must be identical in both suits; 2) the prior judgment must have been rendered by a court of competent jurisdiction; 3) there must have been a final judgment on the merits; and 4) the same cause of action must be involved in both cases.<sup>17</sup> Halo claims that these standards are satisfied because 1) BellSouth was a party to the Transcom bankruptcy case and litigants who have a close and significant relationship (e.g. Transcom/Halo) satisfy the "identical parties" test; 2) the Transcom Bankruptcy Court had

<sup>9</sup> Transcom filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, ("Transcom Bankruptcy Court") on February 18, 2005 in Case No. 05-31929-HDH-11 ("Transcom bankruptcy"). See *Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 3 (January 13, 2012).

<sup>10</sup> *Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 4 (January 13, 2012).

<sup>11</sup> *Id.* at 3, ¶ 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4, ¶ 10.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4, ¶ 11.

<sup>16</sup> *Id.* at 6, ¶ 14.

<sup>17</sup> *Id.* at 6, ¶ 17, citing *Osherow v. Ernst & Young, LLP (In re Intellogic Trace, Inc.)*, 300 F.3d 382, 386 (5th Cir. 2000).

jurisdiction over the 2006 Confirmation Order; 3) the 2006 Confirmation Order is final; and 4) the two actions are based on the same nucleus of operative facts, because the primary issue in both proceedings is whether Transcom provides enhanced services.<sup>18</sup>

Collateral estoppel precludes a party from litigating an issue already raised in an earlier action if: 1) the issue at stake is identical to the one involved in the earlier action; 2) the issue was actually litigated in the prior action; and 3) the determination of the issue in the prior action was a necessary part of the judgment in that action.<sup>19</sup> Halo asserts that 1) AT&T's *Complaint* confronts the authority with an identical issue to that raised in the 2006 Transcom Bankruptcy Court's Confirmation Order, i.e. that Transcom is an ESP not subject to access charges; 2) the issue was litigated in 2006 in the Transcom bankruptcy proceeding; and 3) the determination that Transcom is an ESP was a necessary part of the Confirmation because if it were not, the Plan would not have been feasible and the Confirmation would have been denied.<sup>20</sup>

AT&T opposes the *Motion to Dismiss Complaint With Prejudice* on the grounds that the Motion is at odds with the Federal Communications Commission's ("FCC") *Connect America Fund Order*.<sup>21</sup> AT&T argues that none of the Transcom bankruptcy court proceedings or other earlier proceedings cited by Halo is binding on either AT&T or the Authority.<sup>22</sup> None of the Transcom Bankruptcy Court orders states or suggests that Transcom actually is an end-user, and none of them implies or says anything about the termination or origination of calls.<sup>23</sup> Rather, an ESP is treated as

<sup>18</sup> *Motion to Dismiss Complaint With Prejudice*, pp. 7-8, ¶¶ 18-26 (January 13, 2012).

<sup>19</sup> *Id.* at 10, ¶ 28, citing *Petro-Hunt, L.L.C. v. U.S.*, 365 F.2d 385, 397 (5th Cir, 2004).

<sup>20</sup> *Id.* at 10-11, ¶¶ 27-30.

<sup>21</sup> *Response*, p. 1 (January 19, 2012); See *Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; FCC 11-161, \_\_\_ FCC Rcd \_\_\_ (“*Connect America Fund Order*”) (November 18, 2011).

<sup>22</sup> *Response*, p. 3 (January 19, 2012).

<sup>23</sup> *Id.* at 4.

an end-user for the purpose of being exempted from access charges, nothing more.<sup>24</sup> Further the exemption applies only to ESPs, not carriers (like Halo) that transport calls for ESPs.<sup>25</sup> AT&T asserts that the Authority rejected Halo's *res judicata* and collateral estoppel arguments when it rejected Halo's *Partial Motion to Dismiss*.<sup>26</sup> AT&T further asserts that *res judicata* and collateral estoppel cannot apply because: 1) the main order Halo relies upon was vacated by the federal district court; 2) the bankruptcy cases involved Transcom, not Halo, and therefore were not between identical parties; 3) the Transcom bankruptcy cases did not involve the same cause of action as this case, since this case involves claims for Halo's breach of a contract that was not even formed until after the bankruptcy cases, while the bankruptcy cases involved the issue of whether Transcom was subject to access charges; and 4) the issue in this case (whether Transcom must be deemed to originate or re-originate calls) was never raised, much less decided, in the bankruptcy cases.<sup>27</sup>

The Authority agrees with AT&T that neither *res judicata* nor collateral estoppel applies in this case. The panel finds that *res judicata* does not apply because the Transcom bankruptcy case and this docket do not involve identical parties and this is a breach of contract case and, therefore, is not the same cause of action. The panel also finds that collateral estoppel does not apply because the issue in this case - the origination or re-origination and termination of Halo's calls - was not raised in the Transcom bankruptcy case. Based on these findings, the Authority concludes unanimously that Halo's *Motion to Dismiss Complaint With Prejudice* should be denied.

#### **THE HEARING**

A Hearing in this matter was held before the voting panel of Directors assigned to this docket on January 17, 2012. The Hearing was publicly noticed by the Hearing Officer on

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 4, n. 8.

<sup>26</sup> *Id.* at 3, n. 6.

<sup>27</sup> *Id.*

December 16, 2011 and January 12, 2012. Participating in the Hearing were the following parties and their respective counsel:

**For BellSouth Telecommunications, LLC d/b/a AT&T Tennessee – Joelle Phillips, Esq.**, 333 Commerce Street, Suite 2101, Nashville TN 37201 and **J. Tyson Covey, Esq.**, Mayer Brown, LLP, 71 S. Wacker Drive, Chicago, IL 60606.

**For Halo Wireless, Inc. – Paul S. Davidson, Esq.**, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219; **Steven H. Thomas, Esq.** and **Jennifer M. Larson, Esq.**, McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, TX 75201; **W. Scott McCollough, Esq.**, McCollough/Henry PC, 1250 S. Capital of Texas Highway, Bldg. 2-235, West Lake Hills, TX 78746.

During the Hearing, the Authority heard testimony from AT&T witnesses J. Scott McPhee and Mark Neinast. Russ Wiseman and Robert Johnson testified for Halo.

#### **AT&T'S COMPLAINT**

In its *Complaint*, AT&T seeks to terminate its wireless ICA with Halo because Halo has violated the ICA by sending AT&T large volumes of traffic that does not originate on a wireless network. AT&T further asks the TRA to order Halo to pay it the amounts that it owes AT&T. AT&T asserts that the TRA has jurisdiction over this matter, because it involves (1) violations of an ICA entered into under 27 U.S.C. §§ 251 and 252 that was approved by the Authority and (2) violations of AT&T Tennessee's state tariffs.<sup>28</sup> The *Complaint* contains four counts:

**Count 1 - Breach of ICA: Sending Wireline-Originated Traffic to AT&T Tennessee:** AT&T charges that Halo sends AT&T traffic that is wireline-originated, interstate, interLATA or intraLATA toll traffic and that Halo disguises it as local traffic to avoid access charges that apply to such traffic. AT&T asks the TRA to order Halo to terminate the Parties' ICA for this breach or, in

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<sup>28</sup> *Complaint*, p. 3 (July 26, 2011).



the alternative, to order Halo to cease and desist from sending wireline-originated traffic not authorized by the ICA to AT&T.<sup>29</sup>

Count 2 - Breach of ICA: Alteration or Deletion of Call Detail: AT&T alleges that Halo consistently alters the Charge Number ("CN"), which prevents AT&T from properly billing Halo based on where the traffic originated. AT&T requests that the Authority authorize it to terminate the Parties' ICA, or, in the alternative, to order Halo to cease and desist from altering the CN on traffic that it delivers to AT&T.<sup>30</sup>

Count 3 - Payment for Termination of Wireline-Originated Traffic: The wireline-originated traffic that Halo previously sent to AT&T is not governed by the Parties' ICA but is instead subject to tariffed switched access charges. AT&T therefore asks the Authority to order Halo to pay all access charges due to AT&T within thirty days of the Authority's order.<sup>31</sup>

Count 4 - Breach of ICA: Non-payment for Facilities: AT&T asks the TRA to order Halo to pay it for transport facilities that AT&T has provided but for which Halo has refused to pay.<sup>32</sup>

#### POSITIONS OF THE PARTIES

The Parties have set forth their arguments in full in the record of this docket, in their pre-hearing memoranda and in the presentation of their cases at the Hearing. The following section is intended as a *brief* summary of the positions of AT&T and Halo in this matter.

##### Position of AT&T Tennessee

AT&T asserts that Halo has engaged in three separate types of breaches of the Parties' ICA.<sup>33</sup> Although the ICA requires Halo to send only wireless-originated traffic to AT&T, 74% of

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<sup>29</sup> *Id.* at 3-4.

<sup>30</sup> *Id.* at 4-5.

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 1 (January 6, 2012).

the traffic Halo sends to AT&T is landline-originated traffic.<sup>34</sup> According to AT&T, Halo's contention that it is not breaching the ICA is based on a "wireless in the middle" theory, where Transcom is an ESP; ESPs are treated as end-users; and Transcom must be deemed to "re-originate" every call that passes through Transcom to Halo.<sup>35</sup>

AT&T argues that the FCC has expressly rejected Halo's theory in the *Connect America Fund Order*, where the FCC singled out Halo by name.<sup>36</sup> The FCC rejected Halo's theory that calls that begin with an end-user dialing a call on a landline network can be "re-originated" as wireless calls by passing through an ESP with wireless equipment in the middle of the call.<sup>37</sup> Further, the ESP exemption from access charges applies only to ESPs themselves, not to carriers like Halo that serve them.<sup>38</sup> AT&T asserts, however, that Transcom is not an ESP because reducing background noise and inserting "comfort noise" in periods of silence do not alter the fundamental character of the service from the end-user's perspective.<sup>39</sup>

AT&T argues that its call study showing 74% of the calls Halo sends to AT&T are landline-originated is reliable. Further, Halo does not deny that at least some of its calls it sends to AT&T are landline or IP-originated,<sup>40</sup> which results in a breach of the ICA.<sup>41</sup>

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<sup>34</sup> *Id.* at 5. The terms "wireline" and "landline" are used interchangeably in the parties' testimony. For background, federal law specifies that wireless calls that originate and terminate within the same Major Trading Area ("MTA") are "local calls" and subject to reciprocal compensation rates. Calls exchanged between end-users in different MTAs are considered "InterMTA" and are subject to tariffed interstate or intrastate access charges, which are higher than reciprocal compensation rates. Calls that originate from landline telephones are considered "local" if they both originate and terminate within the same local exchange area. Intercarrier compensation rates for intra-exchange calls are set by the landline ICA; the rates for intrastate inter-exchange calls are set by the state access tariff, and the rates for interstate inter-exchange calls are set by the FCC access tariff. See J. Scott McPhee, Pre-filed Direct Testimony, p. 9 (December 19, 2011).

<sup>35</sup> *Id.*

<sup>36</sup> *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 6 (January 6, 2012).

<sup>37</sup> *Id.* at 7.

<sup>38</sup> *Id.* at 9.

<sup>39</sup> *Id.* at 10-11.

<sup>40</sup> The term "IP" refers to Internet Protocol.

<sup>41</sup> *Id.* at 11-12.

AT&T asserts that Halo also breached the ICA by inserting false charge numbers; specifically, Halo inserts a Transcom Charge Number ("CN") on every call, and the effect is that every call appears local.<sup>42</sup>

AT&T alleges that Halo is breaching the ICA by refusing to pay for interconnection facilities it obtains from AT&T. Because 100% of the traffic between the Parties is traffic that Halo terminates on AT&T's network, Halo is responsible for 100% of the cost of the interconnection facility under the Parties' wireless ICA.<sup>43</sup>

Position of Halo Wireless, Inc.

Halo asserts that it is not in breach of the ICA and AT&T is not entitled to "significant amounts of money" from Halo for the traffic at issue.<sup>44</sup> Halo further asserts that it has a valid and subsisting Radio Station Authorization from the FCC authorizing Halo to provide wireless service as a common carrier and to operate stations in the "3650-3700" MHz band,<sup>45</sup> and is therefore governed exclusively by federal law.<sup>46</sup> Halo argues that the FCC has exclusive jurisdiction over federal licensing and that a state commission cannot take any action that would amount to a suspension or revocation of a federal license.<sup>47</sup>

Halo provides Commercial Mobile Radio Service ("CMRS") and sells telephone exchange service to Transcom, which is a high volume customer.<sup>48</sup> Halo asserts that Transcom is an ESP because it changes the information content of every call that passes through its system and also

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<sup>42</sup> *Id.* at 12-13.

<sup>43</sup> *Id.* at 14-15.

<sup>44</sup> *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p.1 (January 6, 2012).

<sup>45</sup> Russ Wiseman Pre-filed Direct Testimony, p. 2 (December 19, 2011).

<sup>46</sup> *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p. 2 (January 6, 2012).

<sup>47</sup> *Id.* at 2-3.

<sup>48</sup> *Id.* at 1.

offers enhanced capabilities.<sup>49</sup> Transcom is an end-user, not a carrier.<sup>50</sup> Therefore, Halo argues that it is a CMRS carrier selling wireless telephone exchange service to an ESP end-user and its traffic is not wireline-originated.<sup>51</sup> All of the calls received from Transcom within a particular MTA are terminated in the same MTA, so that all of the traffic is subject to local charges in the ICA.<sup>52</sup>

Halo argues that it does not alter or delete call detail in violation of the ICA.<sup>53</sup> Halo populates the CN parameter with the Billing Telephone Number ("BTN") of its end-user customer - Transcom.<sup>54</sup> AT&T alleges improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from the assertion that Transcom is a carrier rather than an end-user.<sup>55</sup> Halo is exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end-user, and in particular a communications-intensive business end-user with sophisticated Customer Premises Equipment ("CPE").<sup>56</sup>

Halo asserts that it does not owe facilities charges to AT&T.<sup>57</sup> 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 Point of Interconnection ("POI").<sup>58</sup> Under the terms of the ICA, the POI is where Halo's network ends.<sup>59</sup> AT&T is attempting to shift cost responsibility for what it calls "facilities" to Halo when the ICA assigns responsibility to AT&T because the "facilities" are all on AT&T's side of the POI.<sup>60</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Id.* at 4-6.

<sup>52</sup> *Id.* at 1.

<sup>53</sup> *Id.* at 6-8.

<sup>54</sup> *Id.* at 8.

<sup>55</sup> *Id.*; see also Russ Wiseman Pre-filed Direct Testimony pp. 26-28 (December 19, 2011).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 9-14.

<sup>58</sup> *Id.* at 9.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 14.

## FINDINGS AND CONCLUSIONS

### Jurisdiction

Throughout these proceedings, Halo has raised objections and challenged the jurisdiction of the Authority to consider the *Complaint* in this matter. The Authority finds that it has jurisdiction to consider the *Complaint* pursuant to both federal and state law. The Authority approved the interconnection agreement between AT&T Tennessee and Halo by order dated June 21, 2010 in TRA Docket No. 10-00063.<sup>61</sup> Interconnection agreements are reviewable and enforceable by the Authority pursuant to 47 U.S.C. § 252 and, in instances where the “market regulation” statute applies, are enforceable pursuant to Tenn. Code Ann. § 65-5-109(m). Further, the Authority has jurisdiction over complaints concerning telecommunications service providers who have elected “market regulation” such as AT&T, pursuant to Tenn. Code Ann. § 65-5-109(m). Halo did not object to the Authority’s jurisdiction to approve the interconnection agreement that now lies at the center of this dispute.<sup>62</sup>

The District Court, in its Order remanding this matter back to the Authority, also recognized the TRA’s jurisdiction over the interpretation of the ICA. The District Court explained the respective roles of the Court and the Authority, stating:

The Telecommunications Act of 1996 (“the Act”) requires that all ICAs be approved by a state regulatory commission before they become effective. State commissions such as the TRA have authority to approve and disapprove interconnection agreements, such as the one at issue herein. 47 U.S.C. § 252(e)(1). That authority includes the authority to interpret and enforce the provisions of agreements that the state commissions have approved. *Southwestern Bell Telephone Co. v. Public Utility Comm’n of Texas*, 208 F.3d 475, 479 (5th Cir. 2000); *Millennium One Communications, Inc. v. Public Utility Comm’n of Texas*, 361 F.Supp.2d 634, 636 (W.D. Tex. 2005). Federal district courts have jurisdiction to review interpretation

<sup>61</sup> See *In Re: Petition For Approval Of The Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063, *Order Approving the Interconnection Agreement and Amendment Thereto* (June 21, 2010).

<sup>62</sup> See *In Re: Petition for Approval of the Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063.

and enforcement decisions of the state commissions. *Id.*; *Southwestern Bell* at p. 480, 47 U.S.C. § 252(e)(6). Here, as noted above, there is no state commission determination to review.

In *Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc.*, 759 F.Supp.2d 772 (E.D. Va. 2011), the court held that federal district courts have federal question jurisdiction to interpret and enforce an ICA, pursuant to 28 U.S.C. § 1331. *Id.* at 778; see also *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1278-79 (11th Cir. 2003) (federal courts have jurisdiction under Section 1331 to hear challenges to state commission orders interpreting ICAs because they arise under federal law) and *Michigan Bell Telephone Co. v. MCI Metro Access Transmission Servs.*, 323 F.3d 348, 353 (6th Cir. 2003) (federal courts have jurisdiction to review state commission orders for compliance with federal law). Although these cases involved state commission orders, their holdings provide guidance on this issue.

Based on the reasoning in the above-cited cases, the Court finds that it has subject matter jurisdiction to hear this matter, pursuant to 28 U.S.C. § 1331 because the ICAs arise under federal law. As stated in *Verizon Maryland*, ICAs are federally mandated agreements and to the extent the ICA imposes a duty consistent with the Act, that duty is a federal requirement. *Verizon Maryland, Inc. v. Global NAPS, Inc.*, 377 F.3d 355, 364 (4th Cir. 2004).

The fact that this Court has jurisdiction does not end the matter, however. The fact that the Court *could* hear this action does not necessarily mean the Court *should* hear this action. Although the Act details how parties, states and federal courts can draft and approve ICAs, it is silent on how and in what fora parties can enforce ICAs. *Global NAPS, Inc. v. Verizon New England Inc.*, 603 F.3d 71, 83 (1st Cir. 2010). Because the Act does not specifically mandate exhaustion of state action, whether to construe the Act as prescribing an exhaustion requirement is a matter for the Court's discretionary judgment. *Ohio Bell Tel. Co., Inc. v. Global NAPS Ohio, Inc.*, 540 F.Supp.2d 914, 919 (S.D. Ohio 2008).

The Third Circuit Court of Appeals has held that interpretation and enforcement actions that arise after a state commission has approved an ICA must be litigated in the first instance before the relevant state commission. *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 344 (3d Cir. 2007). A party may then proceed to federal court to seek review of the commission's decision. *Id.* Citing *Core*, a district court in Ohio has also held that a complainant is required to first litigate its breach-of-ICA claims before the state commission in order to seek review in the district court. *Ohio Bell*, 540 F.Supp.2d at 919-920 (citing cases from numerous district courts).

On the other hand, in *Central Telephone*, the court held that a party to an ICA is not required to exhaust administrative remedies by bringing claims for breach of an ICA first to a state commission. *Central Telephone*, 759 F.Supp.2d at 778 and 786.

The Court agrees with the reasoning of the *Core* and *Ohio Bell* opinions. The Act provides for judicial review of a “determination” by the state commission. Until such determination is made, the Court cannot exercise this judicial review. See *Ohio Bell*, 540 F.Supp.2d at 919. As the *Core* court stated: “a state commission’s authority to approve or reject an interconnection agreement would itself be undermined if it lacked authority to determine in the first instance the meaning of an agreement that it has approved.” *Core*, 493 F.3d at 343 (citing *BellSouth Telecommunications*, 317 F.3d at 1278, n.9).<sup>63</sup>

The Authority is mindful, however, of the restrictions placed upon these proceedings by the Order of the Bankruptcy Court. In an Order issued on October 26, 2011, the Bankruptcy Court ruled that “pursuant to 11 U.S.C. § 362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 . . . is not applicable to currently pending State Commission Proceedings,” including proceedings brought by AT&T.<sup>64</sup> However, the Bankruptcy Court further stated that

any regulatory proceedings . . . may be advanced to a conclusion and a decision in respect of such matters may be rendered; provided however, that nothing herein shall permit, as part of such proceedings:

- A. liquidation of the amount of any claim against the Debtor; or
- B. any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor.<sup>65</sup>

Therefore, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the Bankruptcy Court’s October 26, 2011 Order.

#### AT&T’s Complaint - Count 1

Count 1 of the *Complaint* alleges that Halo has breached the ICA by impermissibly sending traffic originating from wireline telephones to AT&T, although the interconnection agreement only

<sup>63</sup> *BellSouth Telecommunications, Inc. v. Halo Wireless, Inc.*, Case No. 3-11-0795, M.D. Tenn., *Memorandum*, pp. 4-6 (November 1, 2011).

<sup>64</sup> *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 1 (October 26, 2011).

<sup>65</sup> *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 2.

permits Halo to send AT&T traffic that originates from wireless networks. The applicable language from the interconnection agreement reads:

Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network.<sup>66</sup>

The Authority interprets the language of the ICA to require Halo only to deliver traffic that has originated through wireless transmitting and receiving facilities. Thus, evidence that Halo has delivered wireline-originated traffic will result in a finding that Halo has breached the ICA.

The Authority has reviewed Halo's *ex parte* filings with the FCC in the *Connect America Fund* docket, where the description of Halo and Transcom's operations is the same as that which has been presented to the TRA in this proceeding. Indeed, reviewing the *ex parte* filings made by Halo makes it clear that the FCC was aware of Halo's assertion that it provided service to ESPs and used wireless technology. In the resulting *Connect America Fund Order*, the FCC addressed and rejected Halo's assertion that traffic from its customer Transcom is wirelessly originated. The *Connect America Fund Order* states:

We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle,"

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<sup>66</sup> J. Scott McPhee, Pre-filed Direct Testimony, pp. 6-7 (December 19, 2011).



this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."<sup>67</sup>

After clearly describing the operations of Halo, including its use of wireless technology and relationship with Transcom, the FCC found that calls are not originated by Transcom and that wireline originated calls are not reclassified as wireless calls because of a wireless link in the middle of the call path. The FCC in the *Connect America Fund Order* continues:

We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.<sup>68</sup>

The Authority agrees with the FCC's rejection of Halo's assertions and finds that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a wireless-originated call for purposes of reciprocal compensation.

Nor does Halo deny that it is sending traffic that originated on the wireline PSTN.<sup>69</sup> In response to the question, "Do you admit that some of the communications in issue actually started on other networks?" Halo's witness Mr. Wiseman responds "Most 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."<sup>70</sup>

<sup>67</sup> *Connect America Fund Order*, ¶ 1005 (footnotes omitted). The term "CLEC" refers to Competitive Local Exchange Carrier.

<sup>68</sup> *Connect America Fund Order*, ¶ 1006 (footnotes omitted).

<sup>69</sup> The term "PSTN" refers to the Public Switched Telephone Network, which means the calls were originated on the landline network.

<sup>70</sup> Russ Wiseman, Pre-filed Direct Testimony, p. 14 (December 19, 2011).

AT&T's traffic study also demonstrates that Halo has delivered wireline traffic to AT&T. AT&T estimates that about 74% of the traffic Halo sends to AT&T originates on the networks of landline carriers.<sup>71</sup> Even though Halo does not deny it has likely sent wireline traffic to AT&T, it contests the accuracy of AT&T's traffic study. Halo's arguments against AT&T's traffic study are: (1) that telephone numbers are an unreliable indicator of who originates a call, if wireless technology is used for the call and where the call originates and (2) calls that originate using IP technology are not landline calls.

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. In addition, the Authority finds that the convention of collecting data for a single week is sufficient to demonstrate whether wireline traffic was sent to AT&T by Halo. Further, Halo identifies several calls included in AT&T's traffic study as likely being IP-originated,<sup>72</sup> which is considered by the industry to be wireline-originated for the purpose of intercarrier compensation rules.<sup>73</sup>

Based upon the Authority's agreement with the FCC's dispositive decision in the *Connect America Fund Order*, Halo's admission that it has delivered wireline-originated and IP-originated traffic to AT&T, and the information contained in AT&T's traffic study, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

<sup>71</sup> Mark Neinast, Pre-filed Direct Testimony, pp. 3, 11 and Attachment MN-3 (December 19, 2011).

<sup>72</sup> Russ Wiseman, Pre-filed Rebuttal Testimony, pp. 8-9 (January 3, 2012).

<sup>73</sup> Mark Neinast, Pre-filed Rebuttal Testimony, p. 6 (January 3, 2012).

AT&T's Complaint - Count 2

Count 2 of the *Complaint* alleges that Halo breached its interconnection agreement with AT&T by improperly altering call detail information that allows AT&T to properly classify calls for the purpose of intercarrier compensation. Section XIV.G of the ICA requires:

The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.<sup>74</sup>

In addition, Section XIV.E of the ICA also requires Halo to provide many types of call detail information, including the Charge Number.

In most cases, industry members use the Calling Party Number ("CPN") to determine whether a call is jurisdictionally long-distance or local. In rare cases a CN is included in the call detail record to indicate the number that will actually be financially responsible for the call. For example, some businesses want all calls made by its employees in a particular office to be billed to single number. Halo admits that it uses Transcom's BTN to populate the CN fields on traffic since February 2011.<sup>75</sup>

As with Count 1, the Authority finds that the FCC's *Connect America Fund Order* dispositively resolves this issue. Because the FCC dismisses "re-origination" by Transcom, Transcom clearly cannot be the originating entity and thus inserting Transcom's number as the Charge Number is inappropriate. Therefore, because Halo has improperly altered call detail information, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

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<sup>74</sup> *Complaint*, p. 4 (July 26, 2011).

<sup>75</sup> Russ Wiseman, Pre-filed Direct Testimony, pp. 29-30 (December 19, 2011).

AT&T's Complaint – Count 3

Count 3 of the *Complaint* alleges that Halo has not properly compensated AT&T for the traffic it has delivered. Halo has been paying AT&T reciprocal compensation, which is only appropriate if the end-user initiated the call wirelessly within the MTA in which it is terminated, instead of switched access charges, which are appropriate for wireline-originated calls. The FCC's decision in the *Connect America Fund Order*, with which the Authority concurs, is that Halo's traffic does not originate within an MTA with its customer Transcom. In addition, AT&T's traffic study demonstrates that AT&T terminated calls that originated outside the MTA where it was terminated. Further, Halo's use of MTA specific numbers to assert a 100% intra-MTA factor necessarily implies that switched access charges were avoided since Transcom was not the true originating party.

The Authority's findings on Counts 1 and 2 of the *Complaint* concerning the wireline and IP-origination of Halo's traffic necessarily lead to the conclusion that Halo has not been properly compensating AT&T for the traffic it has delivered. The payment of reciprocal compensation is only appropriate if the end-user, which is not Transcom, initiated the call wirelessly within the MTA where it is terminated. Thus, Halo has failed to compensate AT&T for calls where it was due switched access charges. Therefore, the Authority finds that Halo is liable to AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee.

AT&T's Complaint - Count 4

Count 4 of the *Complaint* alleges that Halo has refused to pay AT&T for transport facilities. Section V.B, page 10 of the ICA states:

BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.<sup>76</sup>

Halo does not dispute that it terminates all of its traffic on AT&T's network, but it does dispute AT&T's charges for the two-way trunk groups that connect the Parties. Halo details the arrangement of facilities with which it connects to AT&T in various locations, and it cites from FCC rules to argue that AT&T cannot charge Halo for facilities on AT&T's side of the POI.<sup>77</sup> This line of reasoning might be appropriate if Halo were a CLEC. However, Halo is not a CLEC but rather a CMRS provider, and under the ICA it signed with AT&T, each party is required to pay its share of the facilities cost. The Authority finds that Halo owes AT&T for the proportionate share of the facilities that connect Halo's Point of Presence ("POP") to AT&T's network as required by the ICA. The ICA allocates the costs of facilities based on the proportion of traffic each party sends to the other party, and since Halo sends 100 % of its traffic to AT&T, the Authority finds that Halo should pay 100% of the cost for these facilities as required by the ICA.

#### Transcom Is Not an Enhanced Service Provider

The FCC has established a bright-line rule that the "enhanced" service designation does not apply to services that merely "facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service," and that a service is not "enhanced" when the service does not alter the fundamental character of the service *from the end-user's perspective*.<sup>78</sup> Thus, for example, the FCC has held that

<sup>76</sup> Mark Neinast, Pre-filed Direct Testimony, p.19 (December 19, 2011).

<sup>77</sup> Russ Wiseman, Pre-filed Direct Testimony, p. 41 (December 19, 2011).

<sup>78</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

services are not “enhanced” when customers use the same dialing method for allegedly “enhanced” calls that they would for any other call,<sup>79</sup> or where the alleged “enhancement” was made “without the advance knowledge or consent of the customer” that placed the call and the customer is not “provided with the ‘capability’ to do anything other than make a telephone call.”<sup>80</sup>

The Authority finds that Transcom’s services fail to meet the FCC’s bright-line rule, since the record in this proceeding indicates that Transcom provides no services to actual end-users and does not offer any enhancements discernable to the person that actually places the call.<sup>81</sup> The record also supports the conclusion that end-users are completely unaware that Transcom is even involved in call delivery.<sup>82</sup> Nor does Halo’s testimony prove that Transcom is an ESP. Halo asserts that Transcom

... employs computer processing applications that act on the format, content, code, protocol or similar aspects of the received information. The platform will provide the customer additional, different, or restructured information. This is done by generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications.<sup>83</sup>

However, despite the claim of computer processing of data, Transcom only reduces background noise and inserts “comfort noise” in periods of silence so that those periods of silence are not mistaken for the end of a call.<sup>84</sup> The Pennsylvania Public Utility Commission rejected a similar claim relating to Transcom’s services, finding that “the removal of background noise” and

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<sup>79</sup> *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 15 (2004) (“*IP-in-the-Middle Order*”).

<sup>80</sup> *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826, ¶ 16, n. 28 (2005) (“*AT&T Calling Card Decision*”).

<sup>81</sup> Mark Neinast, Pre-filed Rebuttal Testimony, p. 5 (January 3, 2012).

<sup>82</sup> *Id.*

<sup>83</sup> Robert Johnson, Pre-filed Rebuttal Testimony, p. 12 (January 3, 2012).

<sup>84</sup> *Id.* at 12-13.

“the insertion of white noise” do not make Transcom an ESP.<sup>85</sup> The alleged “enhancements” that Transcom claims it makes to calls that transit its network are simply processes to improve the quality of the call. Telecommunications networks have been routinely making those types of improvements for years and, in some cases, decades. Carriers have routinely incorporated equipment into networks that have, for example, expanded the dynamic range of a voice call to improve clarity. The conversion from analog to digital and back to analog has significantly improved call quality, yet none of these processes are deemed “enhancements” in the sense of an ESP.<sup>86</sup> For the reasons above, the Authority finds that Transcom is not an ESP for this particular traffic.

**IT IS THEREFORE ORDERED THAT:**

1. Halo Wireless Inc.’s *Motion to Dismiss Complaint With Prejudice* is denied.
2. BellSouth Telecommunications, LLC d/b/a AT&T Tennessee is authorized to terminate the interconnection agreement previously approved by the Authority in TRA Docket No. 10-00063 and to stop accepting traffic from Halo Wireless, Inc.
3. Halo Wireless, Inc. is liable to BellSouth Telecommunications, LLC d/b/a AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee thus far and for the interconnection facilities it has obtained from AT&T Tennessee. However, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the *Order Granting Motion of the AT&T*

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<sup>85</sup> *Palmerton Tel. Co. v. Global NAPS South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2011 WL 1259661, at 16-17 (Penn. PUC, March 16, 2010). (“We find that Transcom does not supply GNAPS with ‘enhanced’ traffic under applicable federal rules”). Note that the Pennsylvania Public Utility Commission specifically rejected the Transcom Bankruptcy Court’s April 28, 2005 Memorandum Opinion finding Transcom to be an ESP on the basis that Transcom had indicated in that proceeding that it provided “data communications services over private IP networks (VoIP).” *Id.* The Authority is not persuaded by the Transcom bankruptcy court rulings regarding Transcom’s status as an ESP, either.

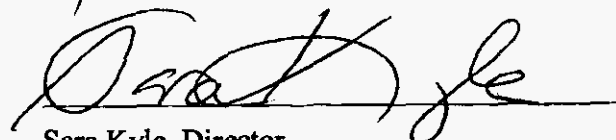
<sup>86</sup> *Id.*

*Companies to Determine Automatic Stay Inapplicable and for Relief From the Automatic Stay* [Dkt. No. 13], issued by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, in Case No. 11-42464-btr-11 on October 26, 2011. AT&T Tennessee may pursue further action for the collection of access charges or facilities charges in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, or other appropriate fora as permitted by that Court.

4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

5. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

  
Kenneth C. Hill, Chairman

  
Sara Kyle, Director

  
Mary W. Freeman, Director