

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

BPS Telephone Company et al.,)	
)	
Complainants)	
)	
v.)	Case No. TC-2011-0404
)	
Halo Wireless, Inc.)	
)	
Respondent)	

**COMPLAINANTS' RESPONSE TO ORDER TO SHOW CAUSE
AND MOTION TO HOLD CASE IN ABEYANCE PENDING BLOCKING PROCESS**

COME NOW BPS Telephone Company et al., Complainants in this case, and state to the Missouri Public Service Commission (Commission or PSC) as follows:

1. Complainants are small rural telephone companies that provide local and exchange access services in remote, high cost and low density areas of Missouri pursuant to certificate of services authority from the PSC.

2. Halo Wireless, Inc. (Halo) is engaged in a multi-state access rate avoidance scheme that spans much of the AT&T landline network in this country and has produced extensive litigation before at least ten state public service commissions, the Federal Communications Commission, numerous federal district courts, a federal Bankruptcy Court in Texas, and most recently the United States Courts of Appeals for the Fifth Circuit and Tenth Circuit.

3. In late 2010 and early 2011, Complaints became aware that Halo was delivering landline-originated calls to Complainants' exchanges over AT&T's landline network without an approved agreement with the Complainants and without paying the Commission-approved tariff rates for such calls. (See Complaint, ¶¶39, 41-49.)

4. For example, Complainants' initial investigation of the problem revealed that calls from the undersigned counsel's landline telephone in Jefferson City, Missouri to a Complainant's business office in Higginsville, Missouri had been routed to Halo's network by one of Halo's affiliates, a "least cost router", and then delivered by Halo over AT&T's network. (*Complaint*, ¶42.) These calls were clearly in-state, inter-LATA landline calls, yet Halo claimed they were intra-LATA "wireless" calls and refused to pay the appropriate tariff rates.

5. Although Complainants received reports from AT&T identifying the amount of traffic Halo delivered (*i.e.* minutes of use), Halo refused to pay Complainants the tariff rates for the use of their in-state networks. Halo's access rate avoidance scheme attempts to take what are clearly landline, in-state telephone calls (subject to PSC-approved intrastate access rates) and claims to convert them into some combination of interstate, Internet, and/or wireless calls in an effort to avoid any payment for the use of Complainants' rural networks.

6. The FCC's November 18, 2011 *USF/ICC Transformation Order*¹ rejected Halo's arguments and found that Halo's scheme did not convert landline calls into something else. Specifically, the FCC held, "**The 're-origination' of a call over a wireless link in the middle of a 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.**"² Rather, the FCC clarified that the originating caller remains the appropriate reference point for purposes of intercarrier compensation. Halo has appealed the FCC's *Order* as part of a consolidated

¹ WC Docket No. 10-90 et al. released Nov. 18, 2011.

² *Id.* at ¶1006 (emphasis added).

proceeding in the United States Court of Appeals for the Tenth Circuit. To Complainants' knowledge, the FCC's *Order* as it relates to Halo has not been stayed.

7. Other state utility commissions have put a stop to Halo's scheme. For example, on January 26, 2012, the Tennessee Regulatory Authority rejected the same arguments that Halo has made before this Commission and terminated Halo's interconnection agreement with AT&T Tennessee.³ The TRA's order found: (a) that Halo impermissibly sent traffic originating from wireline telephones to AT&T under an agreement that only permits calls originating from wireless networks; (b) that Halo had improperly altered call detail information that allowed AT&T to properly classify calls for the purpose of intercarrier compensation; and (c) that Halo had not properly compensated AT&T for the traffic Halo had delivered.⁴ The TRA's order authorized immediate disconnection of Halo from the Tennessee in-state network.⁵

8. In Missouri, Halo filed two lawsuits in the United States District Court for the Western District of Missouri against Complainants.

(a) On July 11, 2011, Halo filed the first federal lawsuit seeking a declaratory judgment and injunctive relief in Case No. 11-cv-00682. This lawsuit was quickly followed by Halo's Suggestions of Bankruptcy and Notice of Stay filed on August 11, 2011. Complainants filed their motions to dismiss on August 19, 2011. On August 22, 2011, Judge Gaitan issued an *Order* ruling that the case was not stayed by Halo's Bankruptcy. The *Order* stated:

³ *In Re BellSouth Telecommunications LLC d/b/a AT&T Tennessee v Halo Wireless, Inc.*, Docket No. 11-00119, *Order*, dated Jan 26, 2012.

⁴ *Id.*, pp. 17-19.

⁵ *Id.*, p. 22.

The Eighth Circuit has held that, **“as the plain language of the statute suggests,... the Code’s automatic stay does not apply to judicial proceedings, such as this suit, that were initiated by the debtor.”** *Brown v. Armstrong*, 949 F.2d 1007, 1009-10 (8th Cir. 1991). The Court notes that the present lawsuit was initiated by the debtor, and therefore the automatic stay provisions of the Bankruptcy Code do not appear to apply.⁶

Halo filed a notice of dismissal of this case on September 6, 2011.

(b) On August 28, 2011, Halo filed a notice of removal of Complainants’ instant case to United States District Court for the Western District of Missouri in Case No. 11-cv-04220. On September 7, 2011, Halo sought to transfer the case to the United States Bankruptcy Court for the Eastern District of Texas. Complainants (and the Commission) filed motions to remand to the Commission which were granted by Judge Laughrey on December 21, 2011. Judge Laughrey’s *Order* stated, **“The Commission has the authority to regulate the subject matter of this dispute,** and the Court does not have jurisdiction over Plaintiff’s claims until the Commission has rendered a decision for the Court to review. **To the extent Defendant argues that Plaintiff’s claims should first be decided by the FCC, this argument is mooted by the FCC’s recent rulemaking decision rejecting Defendant’s position and reaffirming that the power to regulate these issues lies with state agencies.”**

(Emphasis added.)

(c) These two federal lawsuits consumed Complainants’ time and resources.

⁶ *Order*, p. 1 (emphasis added).

9. Halo also filed suit against Complainants in a Texas bankruptcy proceeding which has required Complainants to defend themselves in a Texas bankruptcy court. (The Commission itself has filed briefs in the Texas bankruptcy proceedings to defend its own jurisdiction over the use of Complainants' intrastate networks.) After the Texas bankruptcy judge ruled against Halo's request to prevent further actions before state public utility commissions, Halo filed an appeal to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit denied Halo's Petition for Writ of Mandamus and Motion to Stay the Declaratory Judgment of the Bankruptcy Court.⁷ On March 22, 2012, Complainants (along with similarly-situated Texas RLECs) timely filed a forty-four page Appellees' Brief with the Fifth Circuit. These Texas bankruptcy and Fifth Circuit proceedings have consumed significant resources.

10. On February 22, 2012, in Case No. TO-2012-0035, the Commission issued an order holding that case in abeyance pending completion of Enhanced Record Exchange (ERE) Rule proceedings. Following the Commission's *Order* in that case, a number of the Complainants filed blocking notices pursuant to the ERE Rule in order to stop the bleeding and finally put an end to Halo's uncompensated and unlawful use of their networks.⁸ At that time, those Complainants viewed the blocking notices as the first priority and the most efficient course of action.

11. On April 2, 2012, in Case No. TC-2012-0331, Halo filed a formal complaint in response to those most recent blocking notices. As a result, Halo again seeks to prolong its unlawful free ride on Missouri's rural telecommunications networks.

⁷ See Halo's *First Notice*, Exhibit D, filed Feb. 27, 2012, p. 3.

⁸ Most of the other Complainants have already implemented blocking of Halo's traffic in accordance with the ERE Rule.

12. Collectively, Halo's scheme has cost Missouri's small rural telephone companies over a million dollars in lost access rate revenue, along with the costs of legal expenses and company resources that could be better used in providing service to customers. Although Halo's bankruptcy proceeding may prevent Complainants from receiving any compensation for Halo's pre-bankruptcy use of their networks, this complaint case should remain open to address Halo's ongoing, unlawful post-bankruptcy use of Complainants' networks along with any issues that are not addressed in Case Nos. TO-2012-0035 and TC-2012-0331. Holding this case in abeyance pending the completion of the ERE Rule proceedings in Case No. TC-2012-0331 would further administrative and procedural efficiency. Accordingly, Complainants respectfully request that this case be held in abeyance pending the completion of ERE Rule proceedings and Case Nos. TO-2012-0035 and TC-2012-0031.

CONCLUSION

WHEREFORE, Complainants respectfully request that the Commission issue an Order holding this case in abeyance pending completion of ERE Rule proceedings and grant such other relief as is reasonable and necessary in the circumstances.

Respectfully submitted,

By: **/s/ Trip England**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 6th day of April, 2012, to the following parties:

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