

with others, markets itself to interexchange and other carriers as a least cost router of traffic. Moreover, the traffic Halo is aggregating from these carriers and sending over the AT&T tandem and the LEC-to-LEC network is mostly, if not all, interexchange traffic which should not be delivered over the LEC-to-LEC network but rather over the Feature Group D network in accordance with the appropriate access tariffs of the Complainants.

56. It therefore appears that Halo is principally engaged in a scheme to aggregate interexchange traffic and pass it as "CMRS" in a deliberate attempt to avoid the payment of lawful access charges.

**HALO'S CMRS SERVICE WAS NOT PROPERLY AUTHORIZED**

57. Halo's correspondence to Complainants claim that it has been providing CMRS service from a base station located in Junction City, Kansas in the Kansas City MTA, and from a base station located in Wentzville, Missouri in the St. Louis MTA. Halo, however, was not authorized to operate base or mobile stations in Kansas or Missouri until April 15, 2011. Thus, to the extent Halo operated such facilities prior to April 15, 2011, it did so in violation of the Federal Telecommunications Act and the FCC's Rules and any traffic transmitted over the Kansas or Missouri base stations was not authorized.

58. Halo claims to be providing wireless services pursuant to a nationwide, non-exclusive license in the 3650 MHz band. Although Halo may hold a license in this band, a license in the 3650 MHz "is not authorized to operate a fixed or base station until that station is registered with the FCC." Specifically, prior to operating a fixed or base station, the licensee must register it in the Universal Licensing System (ULS) and "[o]perations cannot begin until the application for registration is in an 'Accepted' status and the nationwide license is updated on ULS." Mobile and portable stations are not

registered "but may only operate if they can positively receive and decode an enabling signal transmitted by a registered base station."

59. Halo submitted applications to register its Junction City, Kansas and Wentzville, Missouri base stations on August 12, 2010, and October 12, 2010, respectively, File Nos. 0004352472 and 0004416632. These registrations, however, remained pending and were not "Accepted" until sometime on April 15, 2011. Accordingly, prior to that time, Halo had no authority to operate either base station or any mobile stations allegedly served by the Junction City and Wentzville base stations. Consequently, either Halo was not operating its base stations in Kansas and Missouri as it claims, or it was doing so without FCC authorization.

#### **THE BLOCKING OF HALO'S TRAFFIC**

60. As a result of Halo's: 1) refusal to enter into Section 251/252 negotiations/arbitration to establish reciprocal compensation for the intraMTA wireless traffic it is terminating to Complainants; 2) refusal to pay appropriate access rates for interexchange wireline traffic it is terminating to Complainants; 3) failure to cease and desist from sending interLATA wireline traffic over the LEC-to-LEC network; and 4) failure to deliver originating caller identification with each call it is terminating to Complainants, several Complainants have, with the assistance of AT&T, blocked Halo from terminating traffic to them pursuant to the Commission's ERE Rule. Although Halo has objected to this blocking of traffic in correspondence to Complainants' and AT&T's counsel, it has not filed a complaint with the Commission as permitted by 4 CSR 240-29.130(9).

61. Several other Complainants have also begun the process of blocking Halo

from terminating traffic to them by sending requests to AT&T and notices to Halo as required by the Commission's ERE Rules. Several other Complainants are considering whether to begin the blocking process but, as of the date of the filing of this Complaint, have not done so.

62. Complainants have made good faith efforts to resolve their dispute with Halo, but these efforts have been unsuccessful to date.

#### **REQUEST FOR WAIVER AND GOOD CAUSE**

63. Although this is a contested case, Complainants hereby request a finding that the Commission's ex parte sixty-day notice rule does not apply or, in the alternative, a waiver of the sixty-day notice requirement for the good cause shown as allowed by Commission Rule 4 CSR 240-4.020(2)(B).

64. First, the ex parte rule is not intended to delay or regulate communication that is part of an evidentiary record. No unlawful communications have been exchanged between the Complainants and the Commission. Complainants have had no contact and do not expect any ex parte contact with the Commission, its technical advisory staff or any presiding officer. Therefore, the rule does not and should not apply to this type of complaint.

65. Second, this is a complaint case authorized by Section 386.390 RSMo. Therefore, Complainants must be allowed to proceed in the same manner as any other non-utility complainant under the statute. As a matter of law, the statute is controlling and, as a matter of fairness, the Commission's rules cannot favor non-utility complainants over public utility complainants.

66. Third, among other things, the complaint alleges ongoing violations of the Commission's ERE Rules in what appears to be an access rate avoidance scheme, and therefore this matter should be allowed to move forward immediately rather than be delayed sixty (60) days.

67. Fourth, the complaint alleges that Halo has terminated substantial amounts of uncompensated traffic to the Complainants, which are small rural telecommunications companies that are least able to withstand non-payment for significant volumes of traffic. These amounts of uncompensated traffic as set forth in Exhibit 35(HC) are significant to small rural local exchange companies and create ongoing and significant damages to Complainants. See *Nexus Communications v. Southwestern Bell*, File No. TC-2011-0132, *Order Granting Rehearing*, pp. 2-3, issued March 2, 2011.

68. Consequently, the Complaints request that the Commission conclude and find that its ex parte rules are not applicable to this complaint or, alternatively, that Complainants have demonstrated the good case required to waive the Commission's ex parte rule (i.e., 4 CSR 240-4.020(2)(B)) in this case.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Complainants respectfully request that the Commission utilize this docket to investigate the activities of Halo as set forth above, and issue its order finding and concluding as follows:

- A. Halo, by placing traffic on the LEC-to-LEC network for termination to Complainants via Feature Group C Protocol, is subject to the provisions of the Missouri ERE Rules, 4 CSR 240-29.010 et seq.;

- B. Halo, by placing traffic on the LEC-to-LEC network on behalf of another carrier or carriers, was either a "Traffic Aggregator" for purposes of the ERE Rules, 4 CSR 240-29.010(3) and (38); or was a "Transiting Carrier" for purposes of the ERE Rule, 4 CSR 240-29.010(38), (39) and (40);
- C. Halo, by placing wireline originated traffic, originated by or with the use of FGD Protocol, on the LEC-to-LEC network for termination using FGC Protocol is in violation of the ERE Rule, 4 CSR 240-29.030(3);
- D. Halo, by placing wireline originated traffic, originated in one LATA and terminating to a wireline telephone of Complainants within another LATA, on the LEC-to-LEC network utilizing FGC Protocol, as opposed to traversing an interexchange carrier point of presence utilizing FGD Protocol is in violation of the ERE Rule, 4 CSR 240-29.010(1);
- E. Halo has failed to comply with the provisions of its interconnection agreement with AT&T requiring Halo to enter agreements with Complainants prior to sending traffic to AT&T for termination to Complainants, 4 CSR 240-29.030(6);
- F. Halo's claim it terminated the traffic in question to Complainants pursuant to a "de facto" bill and keep arrangement is not proper or lawful, as there was no negotiated or arbitrated agreement between Halo and any Complainant, that there was no balance of traffic upon which a "bill and keep" arrangement must be predicated, and that no such arrangement has been approved by this Commission as required by 47 USC 252(e);

- G. Halo has violated the ERE Rule by stripping, altering, moving, masking, or failing to deliver correct originating caller identification information to Complainants, 4 CSR 240-29,040(5) and (6);
- H. That by requiring Complainants to specifically request interconnection, as well as request Halo to engage in arbitration before the Missouri Commission, Halo has erected unwarranted, unnecessary and potentially prejudicial barriers to the establishment of an interconnection and compensation arrangement (pursuant to Sections 251 and 252 of the Act) and has effectively refused to compensate Complainants for the traffic Halo is sending to them for termination.
- I. Halo has terminated traffic to Complainants in violation of the ERE Rule as set forth above, and Complainants should be compensated for such traffic based upon the rates contained in their access tariffs for such traffic, including interest or late fees and attorneys' fees as permitted by those tariffs, and that said amounts are immediately due and payable;
- J. Halo has violated the ERE Rule as set forth above, and the Complainants that have not sought and obtained blocking to date are entitled to commence blocking proceedings in accordance with the ERE Rule;
- K. For the period of time before its CMRS license was effective, Halo was unlawfully operating as an un-certificated carrier providing telecommunications services within Missouri, without having obtained the appropriate certificate or authorization from the Missouri Public Service

Commission or the state of Missouri, or in the alternative was providing traffic aggregation and termination services by private contract with certificated Missouri carriers within the state of Missouri without properly registering to do business in the state of Missouri;

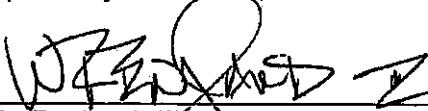
- L. Halo was not operating as a CMRS provider prior to April 15, 2011; any and all Halo traffic terminating to Complainants prior to April 15, 2011 is and was subject to Complainants' access tariffs; and Complainants should be compensated for such traffic based upon the rates contained in their access tariffs for such traffic, including interest or late fees and attorneys' fees as permitted by those tariffs, and that said amounts are immediately due and payable;
- M. Halo is not legitimately operating as a CMRS provider on or after April 15, 2011, and Halo and its customers did not access Halo's networks via mobile devices; therefore, Complainants should be compensated for such traffic based upon the rates contained in their access tariffs for such traffic, including interest or late fees and attorneys' fees as permitted by those tariffs, and that said amounts are immediately due and payable;
- N. That traffic which, at the beginning of the call, originates from a wireless end user in one MTA and is delivered to Halo's base station in another MTA, for ultimate termination to customers of Complainants in the same MTA as the base station, does not constitute calls to and from end-users that both originate and terminate in the same MTA, and Complainants should be

compensated for such traffic based upon the rates contained in their access tariffs for such traffic, including interest or late fees and attorneys' fees as permitted by those tariffs, and that said amounts are immediately due and payable;

- O. Halo, by failing to use alternative means of delivering traffic after Complainants initiated blocking procedures, or by failing to commence an expedited complaint proceeding under the provisions of the ERE Rule (4 CSR 240-29.100 and/or 29.130, failed to implement mechanisms provided Halo by the ERE Rule in which to avoid any negative consequences of blocking;
- P. AT&T, at the request of Complainants, is authorized and directed to block all Halo traffic from terminating to Complainants on the LEC-to-LEC network until Halo has satisfied Complainants and the Commission that Halo is in full compliance with all provisions of the ERE Rule, and will continue in full compliance in the future.

together with such other and further relief as the Commission deems appropriate.

Respectfully submitted,



W.R. England, III

Mo. Bar 23975

Brian T. McCartney

Mo. Bar 47788

Brydon, Swearengen & England P.C.

312 East Capitol Avenue

P.O. Box 456

Jefferson City, MO 65102-0456

573/635-7166

573/634-7431 (facsimile)

Email: [trip@brydonlaw.com](mailto:trip@brydonlaw.com)

[bmccartney@brydonlaw.com](mailto:bmccartney@brydonlaw.com)

Attorneys for Complainants

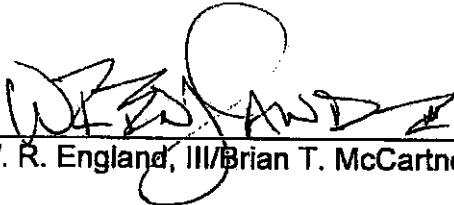
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 22<sup>nd</sup> day of June, 2011 to:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Lewis Mills  
Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

John Marks  
General Counsel  
Halo Wireless  
2351 West Northwest Highway, Suite 1204  
Dallas, TX 75220

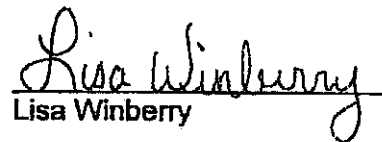


W. R. England, III/Brian T. McCartney

STATE OF MISSOURI )  
 )  
COUNTY OF STODDARD )

**AFFIDAVIT OF LISA WINBERRY**

I, Lisa Winberry, Manager BPS Telephone Company hereby swear and affirm that I am authorized to speak on behalf of BPS and to attest to the veracity of the statements contained in this Complaint.

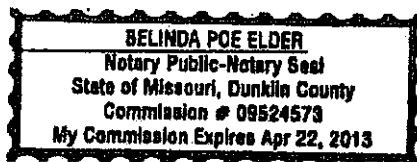
  
Lisa Winberry

State of Missouri )  
 )  
County of Stoddard ) SS

I, Belinda Poe Elder, a Notary Public do hereby certify that on this 16<sup>th</sup> day of June, 2011 personally appeared before me Lisa Winberry who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

  
Notary Public

My Commission expires:



STATE OF Missouri  
COUNTY OF Lafayette

**AFFIDAVIT OF BRIAN CORNELIUS**

I, Brian Cornelius, President of Citizens Telephone Company of Higginsville,  
Missouri, hereby swear and affirm that I am authorized to speak on behalf of Citizens and  
to attest to the veracity of the statements contained in this Complaint.

  
Brian Cornelius

State of Missouri )  
County of Lafayette ) SS

I, Pam L. Gillilan, a Notary Public do hereby certify that on this 15 day  
of June, 2011 personally appeared before me Brian Cornelius who declared that  
all of the information contained herein above is true, to the best of his knowledge and  
belief.

  
Notary Public

My Commission expires:

\_\_\_\_\_

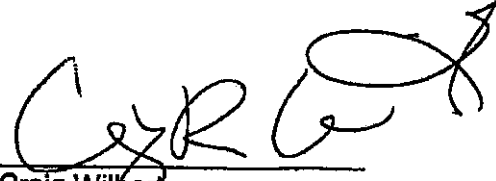


PAM L. GILLILAN  
My Commission Expires  
June 12, 2012  
Lafayette County  
Commission #08493874

STATE OF Kansas )  
 )  
COUNTY OF Crawford )

**AFFIDAVIT OF CRAIG WILBERT**

I, Craig Wilbert, General Manager of Craw-Kan Telephone Cooperative, Inc.  
hereby swear and affirm that I am authorized to speak on behalf of Craw-Kan and to attest  
to the veracity of the statements contained in this Complaint.

  
Craig Wilbert

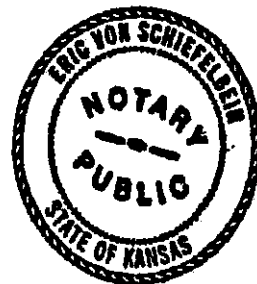
State of Kansas )  
 )  
County of Crawford )      SS

I, Eric Schiefelbein, a Notary Public do hereby certify that on this 15th day  
of June, 2011 personally appeared before me Craig Wilbert who declared that all  
of the information contained herein above is true, to the best of his knowledge and belief.

  
Notary Public

My Commission expires:

August 12, 2014



STATE OF MISSOURI     )  
                                      )  
COUNTY OF REYNOLDS )

**AFFIDAVIT OF DEE MCCORMACK**

I, Dee McCormack, President of Ellington Telephone Company, hereby swear and affirm that I am authorized to speak on behalf of Ellington and to attest to the veracity of the statements contained in this Complaint.

Dee McCormack  
Dee McCormack

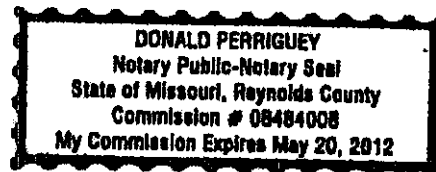
State of MISSOURI     )  
                                      )  
County of REYNOLDS )     SS

I, DONALD PERRIGUEY, a Notary Public do hereby certify that on this 17<sup>TH</sup> day of JUNE, 2011 personally appeared before me Dee McCormack who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

Donald Perrigüey  
Notary Public

My Commission expires:


MAY 20, 2012



STATE OF Missouri )  
 )  
COUNTY OF Audrain )

**AFFIDAVIT OF CHARLES W. CROW**

I, Charles W. Crow, President of Farber Telephone Company, hereby swear and affirm that I am authorized to speak on behalf of Farber and to attest to the veracity of the statements contained in this Complaint.

  
Charles W. Crow

State of Missouri )  
 ) SS  
County of Audrain )

I, Lisa Newland, a Notary Public do hereby certify that on this 16<sup>th</sup> day of June, 2011 personally appeared before me Charles W. Crow who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

  
Notary Public

My Commission expires:

8/30/2013



LISA NEWLAND  
My Commission Expires  
August 30, 2013  
Audrain County  
Commission #09492082

STATE OF MISSOURI )  
COUNTY OF FRANKLIN )

**AFFIDAVIT OF DAVID BEIER**

I, David Beier, Vice President-Regulatory of Fidelity Communication Services I, Inc., Fidelity Communication Services II and Fidelity Telephone Company, hereby swear and affirm that I am authorized to speak on behalf of FCSI, FCSII and Fidelity to attest to the veracity of the statements contained in this Complaint.

David Beier  
David Beier

State of Missouri )  
County of Franklin ) SS

I, Hannah Zelch, a Notary Public do hereby certify that on this 16 day of June, 2011 personally appeared before me David Beier who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

Hannah Zelch  
Notary Public

My Commission expires:

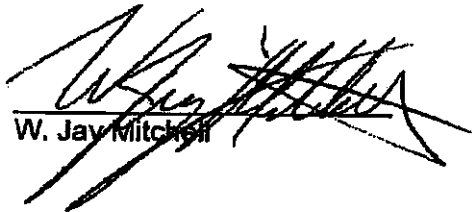
Aug. 8, 2013

HANNAH ZELCH  
Notary Public-Notary Seal  
State of Missouri  
Washington County  
My Commission Expires Aug. 8, 2013  
Commission # 09749161

STATE OF Missouri )  
COUNTY OF Newton )

**AFFIDAVIT OF W. JAY MITCHELL**

I, W. Jay Mitchell, Vice President of Goodman Telephone Company and President of Seneca Telephone Company and Ozark Telephone Company, hereby swear and affirm that I am authorized to speak on behalf of Goodman, Seneca and Ozark and to attest to the veracity of the statements contained in this Complaint.

  
W. Jay Mitchell

State of Missouri )  
County of Newton ) SS

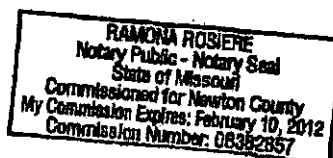
I, Ramona Rosiere, a Notary Public do hereby certify that on this 15<sup>th</sup> day of June, 2011 personally appeared before me W. Jay Mitchell who declared that all of the information contained herein above is true, to the best of his knowledge and belief.



My Commission expires:

Feb 10, 2012  
STATE OF Missouri )

  
Notary Public



STATE OF Missouri )  
COUNTY OF Newton )

**AFFIDAVIT OF JON STOUFFER**

I, Jon Stouffer, President of Granby Telephone Company, hereby swear and affirm that I am authorized to speak on behalf of Granby and to attest to the veracity of the statements contained in this Complaint.

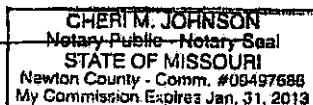
  
Jon Stouffer

State of Missouri )  
County of Newton ) SS

I, Cheri M. Johnson, a Notary Public do hereby certify that on this 21st day of June, 2011 personally appeared before me Jon Stouffer who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

  
Notary Public

My Commission expires:



STATE OF Missouri )  
COUNTY OF MERCER )

**AFFIDAVIT OF WENDEL MYERS**

I, Wendel Myers, General Manager of Grand River Mutual Telephone Corporation and Lathrop Telephone Company hereby swear and affirm that I am authorized to speak on behalf of Grand River and Lathrop and to attest to the veracity of the statements contained in this Complaint.

  
Wendel Myers

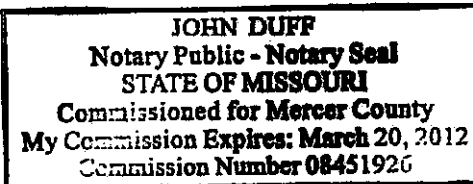
State of Missouri )  
County of MERCER ) SS

I, \_\_\_\_\_, a Notary Public do hereby certify that on this 15<sup>th</sup> day of JUNE, 2011 personally appeared before me Wendel Myers who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

  
Notary Public

My Commission expires:

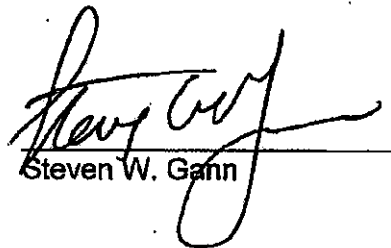
3-20-2012



STATE OF Missouri )  
 )  
COUNTY OF Caldwell )

**AFFIDAVIT OF STEVE GANN**

I, Steven W. Gann, General Manager of Green Hills Telephone Corporation and Green Hills Telecommunications Services hereby swear and affirm that I am authorized to speak on behalf of Green Hills and GHTS and to attest to the veracity of the statements contained in this Complaint.

  
Steven W. Gann

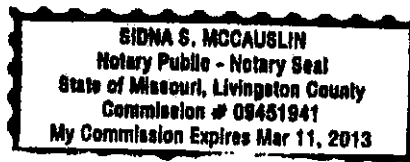
State of Missouri )  
 ) SS  
County of Caldwell )

I, Sidna S. McCauslin, a Notary Public do hereby certify that on this 21st day of June, 2011 personally appeared before me Steven W. Gann who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

  
Notary Public

My Commission expires:

March 11, 2013



STATE OF Nebraska )

COUNTY OF Washington )

**AFFIDAVIT OF SHAWN HANSON**

I, Shawn Hanson, President and General Manager of Holway Telephone Company and KLM Telephone Company hereby swear and affirm that I am authorized to speak on behalf of Holway and KLM and to attest to the veracity of the statements contained in this Complaint.

Shawn Hanson  
Shawn Hanson

State of Nebraska )  
County of Washington ) SS

I, Rita R. Wilkins, a Notary Public do hereby certify that on this 17<sup>th</sup> day of June, 2011 personally appeared before me Shawn Hanson who declared that all of the information contained herein above is true, to the best of his knowledge and belief.

Rita R. Wilkins  
Notary Public

My Commission expires:

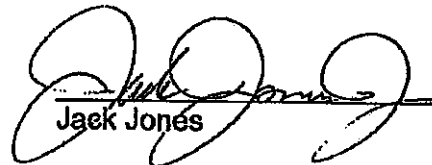
2-1-2014



STATE OF Iowa )  
COUNTY OF Page )

**AFFIDAVIT OF JACK JONES**

I, Jack Jones, General Manager of Iamo Telephone Corporation hereby swear and affirm that I am authorized to speak on behalf of Iamo and to attest to the veracity of the statements contained in this Complaint.

  
Jack Jones

State of Iowa )  
County of Page )      SS

Tamara LePorte, a Notary Public do hereby certify that on this 15<sup>th</sup> day of July, <sup>2011</sup>2002 personally appeared before me Jack Jones who declared that all of the information contained herein above is true, to the best of her knowledge and belief.



Tamara LePorte  
Notary Public

My Commission expires:

July 20 2011