termination based on the following formula: Total Minutes of Use will be calculated based on total IntraMTA MOUs (identified by CTUSR records or other mutually acceptable calculation) less any InterMTA traffic (see Section 5.2), divided by 0.84 (eighty-four percent). The Total Minutes of Use will then be multiplied by 0.16 (sixteen percent) to determine the traffic originated by ILEC and delivered to T-Mobile for termination. ILEC will bill T-Mobile based on the total amount T-Mobile owes ILEC minus the amount ILEC owes T-Mobile.

5.2 If a Billing Party is unable to record traffic terminating to its network and the other Party is unable to provide billing records of the calls that it originates to the other Party, the Billing Party may use usage reports and/or records (such as a CTUSR) generated by a third-party LEC whose network is used to transit the traffic as a basis for billing the originating Party. As of the effective date of this Agreement, the Parties are unable to measure the amount of interMTA traffic exchanged between the Parties. For the purposes of this Agreement, the Parties agree to use the percentage(s) referenced in Appendix 2 as a fair estimate of the amount of interMTA traffic exchanged between the Parties (including, where appropriate, the interstate and intrastate percentages). This percentage shall remain in effect until amended as provided herein. Notwithstanding the foregoing, if either Party provides to the other a valid interMTA traffic study or otherwise requests a reexamination of the network configuration of either Party's network, the Parties shall use such interMTA traffic study or reexamination to negotiate in good faith a mutually acceptable revised interMTA percentage. For purposes of this Agreement, a "valid interMTA traffic study" may be based upon, but not necessarily limited to, calling party information (i.e., originating NPA NXX, minutes of use, etc.) which, for several consecutive billing periods, indicates an amount of interMTA traffic that is at least five (5) percentage points

greater or lesser than the interMTA percentage amount to which the Parties previously agreed. The Parties agree to cooperate in good faith to amend this Agreement to reflect this revised interMTA percentage, and such revised percentage will be effective upon amendment of this Agreement, including any state commission approval, if required. Such studies or reexaminations shall be conducted no more frequently than once annually.

5.3 The originating Party shall pay the Billing Party for all charges properly listed on the bill. Such payments are to be received within thirty (30) days from the effective date of the billing statement. The originating Party shall pay a late charge on any undisputed charges that are not paid within the thirty (30) day period. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law. Normally, neither Party shall bill the other Party for traffic that is more than 90 days old. However, in those cases where billing cannot be performed within that time frame because of record unavailability, inaccuracies, corrections, etc., billing can be rendered or corrected for periods more than 90 days old. In no case, however, will billing be made for traffic that is more than two years old; provided, however, that neither Party may issue a bill under this Agreement corresponding to traffic exchanged before the Effective Date.

5.4 The Billing Party agrees not to render a single bill totaling less than $250.00, but rather will accumulate billing information and render one bill for multiple billing periods when the total amount due for the multiple billing periods exceeds $250.00; provided however that a Billing Party is entitled to render a bill at least once per calendar quarter, even if the bill rendered is for less than $250.00. No late charges or interest shall be assessed during any deferring billing period.

SECTION 6 - AUDIT PROVISIONS

6.1 As used herein, "Audit" shall mean a comprehensive review of services performed under this Agreement. Either Party (the "Requesting Party") may perform one (1) Audit per 12-month period commencing with the Effective Date.

6.2 Upon thirty (30) days written notice by the Requesting Party to the other "Audited Party", the Requesting Party shall have the right, through its authorized representative(s), to perform an Audit, during normal business hours, of any records, accounts and processes which contain information bearing upon the services provided, and performance standards agreed to, under this Agreement. Within the above-described 30-day period, the Parties shall reasonably agree upon the scope of the Audit, the documents and processes to be reviewed, and the time, place and manner in which the Audit shall be performed. The Audited Party agrees to provide Audit support, including reasonable access to and use of the Audited Party's facilities (e.g., conference rooms, telephones, copying machines.)

6.3 Each party shall bear the cost of its own expenses in connection with the conduct of the Audit. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit will be paid for by the Requesting Party. For purposes of this Section 6.3, "Special Data Extraction" shall mean the creation of an output record or information report (from existing data files) that is not created in the normal course of business by the Audited Party. If any program is developed to the Requesting Party's specifications and at the Requesting Party's expense, the Requesting Party shall specify at the time of request whether the program is to be retained by the Audited Party for reuse during any subsequent Audit.

6.4 Adjustments, credits or payments shall be made, and any correction action shall commence, within thirty (30) days from the Requesting Party's receipt of the final audit report to

compensate for any errors or omissions which are disclosed by such Audit and are agreed to by the Parties. One and one-half (1 ½) percent or the highest interest rate allowable by law for commercial transactions, whichever is lower, shall be assessed and shall be computed on any adjustments, credits or payments if the audit establishes an overpayment or underpayment of greater than two (2) percent of the actual amount due by compounding monthly from the time of the error or omission to the day of payment or credit.

6.5 Neither the right to Audit, nor the right to receive an adjustment, shall be affected by any statement to the contrary appearing on checks or otherwise, unless such statement expressly waiving such right appears in writing, is signed by the authorized representative of the Party having such right and is delivered to the other Party in a manner provided by this Agreement.

6.6 This Section 6 shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

SECTION 7 - DISPUTE RESOLUTION

7.1 The Parties agree to resolve disputes arising out of this Agreement with a minimum amount of time and expense. Accordingly, the Parties agree to use the following dispute resolution procedure as a sole remedy with respect to any controversy or claim arising out of or relating to this Agreement, except for an action seeking to compel compliance with the confidentiality provision of Section 8 or this dispute resolution process (venue and jurisdiction for which would be in St. Louis or Kansas City, Missouri). No cause of action, regardless of form, arising out of the subject matter of this Agreement may be brought by either Party more than 2 years after the cause of action has accrued. The Parties waive the right to invoke any

different limitation on the bringing of actions provided under state or federal law unless such waiver is otherwise barred by law.

7.2 At the written request of a Party commencing the dispute resolution process described herein, each Party will appoint a representative to meet and negotiate in good faith for a period of sixty (60) days (unless the parties agree that a voluntary resolution is unlikely) after the request to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer business representatives, but nothing prevents either Party from also involving an attorney in the process. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement of the representatives, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the Commission proceeding or arbitration described below or in any lawsuit without concurrence of both Parties.

7.3 If the negotiations do not resolve the dispute within sixty (60) days (sooner if the parties agree that a voluntary resolution is unlikely) after the initial written request, the dispute may be brought in any lawful forum for resolution unless the Parties mutually agree to submit the dispute to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or such other rules to which the Parties may agree. If the Parties mutually agree to submit the dispute to binding arbitration, the arbitration hearing shall be commenced within forty-five (45) days after the agreement for arbitration and shall be held in Saint Louis or Kansas City, Missouri, or any other location to which the Parties mutually agree.

The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearing. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. The decision of the arbitrator shall be final and binding upon the Parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Each party shall bear its own costs and attorneys' fees of the arbitration procedures set forth in this Section and shall equally split the fees and costs of the arbitration and the arbitrator.

7.4 In addition to the foregoing Dispute Resolution process, if any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give notice to the Billing Party of the amounts in dispute ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The balance of the Disputed Amount shall thereafter be paid, with late charges as provided in Section 5.3, if appropriate, upon final determination of such dispute. Late charges assessed on those amounts that were unpaid but disputed after thirty (30) days from the receipt of the invoice, shall be credited to the non-paying Party for any disputed amounts which were ultimately found to be not due and payable.

SECTION 8 - CONFIDENTIAL INFORMATION

8.1 The Parties recognize that they or their authorized representatives may come into possession of confidential and/or proprietary data about each other's business as a result of this

Agreement. Each Party agrees to treat all such data as strictly confidential and to use such data only for the purpose of performance under this Agreement. Each Party agrees not to disclose data about the other Party's business, unless such disclosure is required by lawful subpoena or order, to any person without first securing the written consent of the other Party. If a Party is obligated to turn over, divulge, or otherwise disclose the other Party's confidential information as the result of an order or subpoena issued by a court or other tribunal of competent jurisdiction, then the Party to which such demand is being made shall notify the other Party as soon as possible of the existence of such demand, and shall provide all necessary and appropriate assistance as the Party whose information is sought to be disclosed may reasonably request in order to preserve the confidential nature of the information sought.

SECTION 9 - LIABILITY AND INDEMNIFICATION

9.1 Neither Party assumes any liability for any act or omission of the other Party in the furnishing of its services to its subscribers solely by virtue of entering into the Agreement. To the extent not prohibited by law or inconsistent with the other terms of this Agreement, each Party shall indemnify the other Party and hold it harmless against any loss, costs, claims, injury or liability relating to any third-party claim arising out of any act or omission of the indemnifying Party in connection with the indemnifying Party's performance under this Agreement. Furthermore, the Parties agree to arrange their own interconnection arrangements with other telecommunications carriers, and each Party shall be responsible for any and all of its own payments thereunder. Neither Party shall be financially or otherwise responsible for the rates, terms, conditions, or charges between the other Party and another telecommunications carrier.

9.2 NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, FOR ANY HARDWARE, SOFTWARE, GOODS, OR SERVICES PROVIDED UNDER THIS AGREEMENT. ALL WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND WAIVED.

9.3 In any event, each Party's liability for all claims arising under this Agreement, or under the provision of the service provided under this Agreement, shall be limited to the amount of the charges billed to the Party making a claim for the month during which the claim arose.

SECTION 10 - TERM OF AGREEMENT

10.1 This Agreement shall commence on the Effective Date, and shall terminate two (2) years after the Effective Date. This Agreement shall renew automatically for successive one (1) year terms, commencing on the termination date of the initial term or latest renewal term. The automatic renewal shall take effect without notice to either Party, except that either Party may elect: 1) not to renew by giving the other Party at least ninety (90) days written notice of the desire not to renew; or 2) to negotiate a subsequent agreement by giving the other Party at least ninety (90) days written notice of the desire to commence negotiations. If a Party elects to negotiate a subsequent agreement and a subsequent agreement has not been consummated prior to the termination date of the current Agreement, the current Agreement shall continue to be in effect until it is replaced by a new Agreement, or one hundred eighty (180) days beyond the termination date of the current Agreement, whichever is less.

SECTION 11 - INDEPENDENT CONTRACTORS

11.1 The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

SECTION 12 - THIRD PARTY BENEFICIARIES

12.1 This Agreement is not intended to benefit any person or entity not a Party to it and no third party beneficiaries are created by this Agreement.

SECTION 13 - GOVERNING LAW, FORUM AND VENUE

13.1 The construction, validity, and enforcement of this Agreement shall be governed by the laws and regulations of the State of Missouri, except when Federal law may be controlling, in which case federal law will govern.

SECTION 14 - ENTIRE AGREEMENT

14.1 This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

SECTION 15 - NOTICE

15.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by overnight express delivery service with tracking capability, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested, or (iv) delivered by telecopy, with a follow-up copy delivered pursuant to (i), (ii) or (iii) above, to the following addresses of the Parties:

T-Mobile USA, Inc.
Attn: General Counsel
12920 SE 38th Street
Bellevue, WA 98006
425-378-4040 facsimile
dan.menser@t-mobile.com

With a Copy To:

T-Mobile USA, Inc.
Attn: Carrier Management
12920 SE 38th Street
Bellevue, WA 98006
425-378-4040 facsimile
chris.sykes@t-mobile.com

In the case of ILEC:

Citizens Telephone Company of Higginsville, Missouri
Brian Cornelius
1905 Walnut Street, P.O. Box 737
Higginsville, MO 64037-0737
Facsimile: 660-584-6211

With a copy to:

W.R. England, III
Brydon, Swearengen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone Number: 573/635-7166
Facsimile Number: 573/634-7431
Trip@brydonlaw.com

or to such other address as either Party shall designate by proper notice.

or to such other location as the receiving Party may direct in writing. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via overnight mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy. Notice received after 5:00 p.m. local time of the receiving Party, or received on a Saturday, Sunday or holiday recognized by the United States government, shall be deemed to have been received the following business day.

SECTION 16 - FORCE MAJEURE

16.1 The Parties shall comply with applicable orders, rules, or regulations of the FCC and the Commission and with applicable Federal and State law during the terms of this Agreement. Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting from acts of God, civil or military authority, acts of the public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts, or other work interruptions by employees or agents not within the control of the non-performing Party.

SECTION 17 - TAXES

17.1 The Party collecting revenues shall be responsible for collecting, reporting, and remitting all taxes associated therewith, provided that the tax liability shall remain with the Party upon whom it is originally imposed.

SECTION 18 - ASSIGNMENT

18.1 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, a Party may assign this Agreement or any portion thereof, without consent but upon written notice to the other Party, to any entity that controls, is controlled by or is under common control with the assigning Party or to an entity acquiring all or substantially all of the assets of a Party. Any such assignment shall not, in any way, affect or limit the rights and obligations of the Parties under the terms of this Agreement.

SECTION 19 - TERMINATION OF SERVICE TO EITHER PARTY

19.1 If either party fails to pay when due any undisputed charges billed to them under this Agreement ("Undisputed Unpaid Charges"), and any portion of such charges remain unpaid more than thirty (30) days after the due date of such Undisputed Unpaid Charges, the billing Party may follow the procedures for blocking the traffic of the non-paying Party as established by 4 CSR 240-29.120, Rules and Regulations of the Missouri Public Service Commission.

SECTION 20 - MISCELLANEOUS

20.1 This Agreement is not an interconnection agreement under 47 U.S.C. 251(c), but rather a reciprocal compensation agreement under 47 U.S.C. 251(b)(5). The Parties acknowledge that ILEC may be entitled to a rural exemption as provided by 47 U.S.C. 251(f), and ILEC does not waive such exemption by entering into this Agreement.

20.2 In the event that any effective legislative, regulatory, judicial, or other legal action affects any material terms of this Agreement, or the ability of the Parties to perform any material terms of this Agreement, either Party may, on thirty (30) days' written notice, require that such items 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 may be referred to the Dispute Resolution procedure set forth herein.

Signature Page to the Agreement Between Citizens Telephone Company of Higginsville, Missouri (ILEC) and TMUSA

This Agreement is executed this 16th day of June, 2006.

T-Mobile USA, Inc.

Chris Sykes
Signature

CHRIS SYKES
Name

DIRECTOR, CARRIER MGMT
Title

6/13/06
Date

Citizens Telephone Company of Higginsville, Missouri

Signature

Brian L. Cornelius
Name

President
Title

6/16/06
Date

T-Mobile Legal Approval By:
6/9/06

APPENDIX 1 to the Agreement Between Citizens Telephone Company of Higginsville, Missouri (ILEC) and TMUSA

Rates for termination of Local Traffic via an indirect interconnection[1]

Local Termination Rate	$	0.0073 per minute
Traffic factor		84/16 (MTL/LTM)

[1] The rates, terms and conditions contained in this Agreement will apply to services rendered on and after April 29, 2005, in accordance with the FCC rules regarding interim transport and termination pricing (§51.715).

APPENDIX 2 to the Agreement Between Citizens Telephone Company of Higginsville, Missouri (ILEC) and TMUSA

Pursuant to Section 5.2, the interMTA percentage is 0%.

Interstate percentage:	20%
Intrastate percentage:	80%

EXHIBIT 4

McCOLLOUGH|HENRY PC

Matthew A. Henry
1250 South Capital of Texas Highway
Building 2, Suite 235
West Lake Hills, Texas 78746
Phone: 512.888.1114
Fax: 512.692.2522
henry@dotlaw.biz

May 23, 2011

VIA EMAIL

Alex Starr — Alex.Starr@fcc.gov
Rosemary McEnery, — Rosemary.McEnery@fcc.gov
Michael Engel — Michael.Engel@fcc.gov
Tracy Bridgham — Tracy.Bridgham@fcc.gov
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Halo Wireless v. Citizens Telephone Company of Higginsville Missouri*
Halo Wireless v. Green Hills Telephone Corporation
Halo Wireless v. Mid-Missouri Telephone Company
Halo Wireless v. Northeast Missouri Rural Telephone Company
Halo Wireless v. Chariton Valley Telephone Corporation
Halo Wireless v. Mark Twain Rural Telephone Company
Halo Wireless v. AT&T Missouri

Dear Mr. Starr, Ms. McEnery, Mr. Engel and Ms. Bridgham:

Pursuant to the instructions of the Enforcement Bureau, Halo Wireless, Inc. ("Halo") hereby submits this reply to the responses of the above-noted prospective defendants. This reply will address various factual and legal issues raised in the responses of AT&T and the Missouri RLECs (collectively, "the ILECs").

I. Introduction

The prospective defendants' responses assert that this matter is inappropriate for Accelerated Docket treatment under the criteria within 47 C.F.R. § 1.730(e). Halo will address those arguments below. More fundamentally, however, the defendants want the FCC to entirely avoid addressing the issues. Instead they would require Halo to seek relief from the Missouri Public Service Commission using the processes contained in state's "Enhanced Record Exchange Rules" ("ERE rules") or, perhaps, within the context of "the negotiation and arbitration procedures contained in section 252 of the Act" after any perceived "arbitration window" opens. In other words, the prospective defendants claim that Halo cannot bring these matters to the Commission at all, even as part of a non-accelerated formal complaint under § 208. Instead, the prospective defendants are attempting to force Halo to use a more favorable state-level venue of their choice and bring multiple state commission cases by using ERE rules that do not apply on their face, nor allow for blocking in any event. Alternatively, the defendants

request that the Commission allow them to turn 47 C.F.R. § 20.11(d) and (e) on their head by applying access charges to CMRS traffic that is at least arguably not subject to access. The defendants want to force *Halo* to become a "requesting carrier" when subsection (e) says *the RLECs* must undertake that process and then accept the burdens that apply to an *RLEC* "request for interconnection." The RLECs do not like the "no compensation" arrangement prescribed in *T-Mobile, nor do* they like the process the Commission gave them to change "no compensation" into "§ 251(b)(5)" compensation.

The prospective defendants ultimately defend their actions by challenging the scope of Halo's **federal** CMRS authorization and Halo's **federal** right to interconnect, by interpreting non-251/252 related **FCC** rules, by trying to recover *intrastate* access charges on jurisdictionally **interstate** non-access traffic, and by taking issue with signaling practices that are consistent with current and proposed **federal** rules. The law to be interpreted and applied in this case is entirely **federal** in nature, and much of it is subject to this Commission's exclusive and original jurisdiction. The state commission does not have jurisdiction. Even if the state could be said to have jurisdiction, it would be required to interpret federal law external to §§ 251 and 252, and to do so in a way that would intrude on the FCC's exclusive jurisdiction.

Halo will file an action under § 206. Halo has chosen to seek relief from the FCC under § 208 (instead of the sole alternative – a federal court under § 207) for asserted violations § 201 of the Act and 47 C.F.R. §§ 20.11, 51.301, 63.60, 63.62, and 63.501. If this matter is not accepted on the accelerated docket, Halo intends to file a formal complaint. State commissions are not federal courts, and they are not the FCC. They do not have jurisdiction over § 206 actions. State commissions cannot enforce § 201, or §§ 20.11, 63.60, 63.62 or 63.501. Halo cannot be required to go to the Missouri state commission to enforce its federal rights or for damages, particularly since the PSC cannot award the damages contemplated by §§ 207 and 208. This case involves federal questions, federal rights, duties and obligations and involves violations of federal law. If the Commission declines to hear the matter then Halo will go to federal court.

Halo will generally address many of the prospective defendants' factual assertions below, but the competing factual claims will ultimately be presented and resolved as part of the complaint – on an Accelerated Docket basis, or on a non-Accelerated Docket bases. Suffice it to say that Halo denies many of the basic facts and virtually all of their intermediate facts and legal conclusions laid out in both AT&T's response and in the RLECs' consolidated response. The primary intent of this Reply, however, is to illustrate that the issues are almost entirely interstate and federal, and thus exclusively within the Commission's jurisdiction. Halo will then explain, again, why Accelerated Docket treatment is appropriate.

II. Background

The Missouri Rural Local Exchange Carriers ("RLECs") identified in Halo's Request for Inclusion on the Accelerated Docket have a long history of flaunting their *federal* interconnection-related duties *vis-à-vis* Commercial Mobile Radio Station ("CMRS") providers. The RLECs have repeatedly demanded that CMRS providers pay tariffed intrastate exchange access charges for jurisdictionally interstate traffic as well as for traffic involving § 251(c)(2) interconnection that falls within § 251(b)(5) and the Commission's Part 51, Subpart H rules. These very same RLECs were the ones whose unilateral actions – with state commission support – led to T-Mobile's petition for declaratory ruling in CC Docket No. 01-92 that was resolved by both a Declaratory Ruling and the amendments to § 20.11, that now appear in subsections (d)

and (e).[1] Throughout that proceeding, the Missouri RLECs categorically opposed the use of § 252 procedures and development of §§ 251/252-compliant terms for CMRS traffic.[2] These RLECs claimed that "bill and keep is telecommunications highway robbery"[3] and that "[b]y engaging in this practice, [] CMRS providers are in violation of 47 C.F.R. section 20.11(b)(2)."[4] The RLECs even opposed T-Mobile's suggestion that § 20.11(e) be adopted so that ILECs could directly compel negotiation and arbitration under § 252 with CMRS providers. They argued that the concept of ILEC-initiated interconnection negotiations "defies common sense" and that "[s]mall rural carriers should not be required to chase down wireless carriers across the country to receive compensation for the use of their facilities and services."[5]

Ultimately, the Commission rejected the Missouri RLECs' arguments and promulgated 47 C.F.R. §§ 20.11(d) and (e), with the result that no compensation is due unless the ILEC invokes the rule.[6] The Missouri RLECs filed a petition for reconsideration of the *T-Mobile Order* and continued to argue to the Commission that "bill and keep is not viable for small rural rate of return ILECs."[7] These RLECs have always been dissatisfied with the *T-Mobile Order* result. They subsequently went back to the state level and convinced the Missouri PSC to promulgate rules that the RLECs now read to allow them to *not* comply with § 20.11(d), and to *not* use § 20.11(e). Instead, they read the ERE rules as authorizing them to send access bills to a CMRS provider and then block a CMRS provider's interstate traffic unless *the CMRS provider* becomes a "requesting carrier" under § 252 and pays *access charges* for intraMTA traffic until there is a negotiated or arbitrated § 252 agreement.

The RLECs also apparently believe that the ERE rules allow them to block a CMRS providers' *interstate* traffic when the CMRS provider employs signaling practices that fully comply with the FCC's current rules and even the Commission's proposed signaling rules.[8] They claim this right even if it is *AT&T's* signaling network and *AT&T's* tandem records that modify

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1 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 Order*").

2 *See* e.g., Reply Comments of the Missouri Small Telephone Company Group, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 at p. 7 (filed Nov. 5, 2001).

3 *See* Reply Comments of the Missouri Independent Telephone Company Group Regarding the September 6, 2002 Petition for Declaratory Ruling filed by T-Mobile USA, Western Wireless Corporation, Nextel Communications, Inc., and Nextel Partners, Inc., *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 at p. 7 (filed Nov. 1, 2002) at p. 24.

4 *Id* at p. 28.

5 *See* Missouri Small Telephone Company Group Written *Ex Parte*, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 at p. 13 (filed Aug. 17, 2004).

6 *See T-Mobile Order* at n. 57 ("Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination.").

7 *See* Reply Comments of the Missouri Independent Telephone Company Group, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 at p. 6 (filed Jul. 20, 2005). (emphasis omitted).

8 NPRM and FNPRM, *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., FCC 11-13, _ FCC Rcd. _ (Feb. 9, 2011) and published at 76 Fed. Reg. 11632 (March 2, 2011). FCC has also proposed rules to implement the Truth in Caller ID Act. *See* Notice of Proposed Rulemaking, *In the Matter of Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, FCC 11-41, __ FCC Rcd ___ (2011).

or do not properly record the signaling address content in the Calling Party Number ("CPN") and Charge Number ("CN") parameters that the CMRS provider has populated.

The prospective defendants justify their actions by claiming that Halo is engaging in some kind of "access avoidance scheme,"[9] that Halo is not "really" providing a CMRS service, and that Halo is engaging in improper signaling practices. These are nothing but *post hoc* justifications for their violations of § 201 and FCC rules. The RLECs announced their intention to block long before any of this was raised, based solely on Halo's refusal to pay access charges consistent with § 20.11(d), and Halo's choice to not become a requesting carrier and instead require the RLECs to use § 20.11(e) according to its plain terms. This is merely the latest instance of the RLECs refusing to accept the Commission's authority and refusing to follow federal law and Commission rules. They are attempting to impose their will through coercion and home-field advantage before a state commission that regulates ILECs (and thus a vested interest in ILEC well-being) but has no authority over CMRS providers (and thus no care for the interest of CMRS providers).

Regulated ILECs and state commissions are threatened by the potential competitive threat CMRS offers, particularly in rural areas, and they are intent on maintaining a barrier to CMRS competitive entry by imposing above-cost intercarrier compensation obligations. They also both have a vested interest in restricting the range of activities a CMRS provider may conduct. Halo is providing federally-authorized telephone exchange and/or exchange access service to its customers and is not providing any telephone toll service. The interconnection rights in issue here flow from § 332(c)(1)(B), and are purely federal in nature. If, *arguendo*, the service is not "mobile" (which Halo denies), then it is "fixed" but still "CMRS."[10] A large portion of this service is jurisdictionally interstate for several reasons,[11] and therefore even if, *arguendo*, it is "wireline" rather than "wireless" (which Halo denies), Halo has the full authority to provide the service as a matter of federal law with no need or obligation to submit to state regulatory authority or to secure a state's permission. *See* 47 C.F.R. 63.01[12]

The RLECs and AT&T did not disclose that, subsequent to Halo's letter requesting Accelerated Docket treatment, several more "Swearengen" RLECs have requested that AT&T

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[9] *See* Missouri RLEC Response to Halo Pre-Complaint Letter at p. 2.

[10] First Report and Order and Further Notice of Proposed Rulemaking, *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, 11 FCC Rcd 8965, 8967 (1996) ("*CMRS-Flex Order*").

[11] Much of the traffic is handled through a base station in the same MTA, but physically located in a different state. Further, much of the traffic is related to an enhanced/information service provider customer and is thus jurisdictionally interstate. *See, e.g.*, Memorandum Opinion and Order, *MTS and WATS Market Structure*, CC Docket No. 78-72, 97 FCC 2d 682, 711 (1983) ("[a]mong the variety of users of access service are . . . enhanced service providers"); Order, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, 3 FCC Rcd 2631 (1988) (referring to "certain classes of exchange access users, including enhanced service providers"); Order, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, 2 FCC Rcd 4305, 4306 (1987) (ESPs, "like facilities-based interexchange carriers and resellers, use the local network to provide interstate services").

[12] *See* 47 C.F.R. § 63.01(a): "Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies."

begin to block traffic. AT&T has complied with some of those requests, and yet more blocking will occur in the coming weeks. The table below lists the Missouri RLECs that have requested blocking, and the date blocking has occurred or will occur. Each of these instances results in a denial of Halo's federal interconnection rights and remedies, and a violation of the federal Communications Act and FCC rules. This is a growing problem, and it is one only the Commission can resolve.

ILEC	Request Date	Blocking Date
Citizens Telephone Co. of Higginsville	1/19/2011	3/15/2011
Green Hills Telephone Co.	1/19/2011	3/15/2011
Mid-Missouri Telephone Co.	3/7/2011	3/21/2011
Northeast Missouri Rural Telephone Co.	3/16/2011	4/19/2011
Chariton Valley Telephone Corp.	3/29/2011	5/2/2011
Mark Twain Rural Telephone Co.	3/30/2011	5/03/2011
Fidelity Telephone Company	4/20/2011	5/24/2011
BPS Telephone Company	4/22/2011	5/24/2011
Kingdom Telephone Company	4/27/2011	6/1/2011
Holway Telephone Company	4/27/2011	6/1/2011
KLM Telephone Company	4/27/2011	6/1/2011
Farber Telephone Co.	5/20/2011	6/21/2011
Steelville Telephone Exchange, Inc.	5/20/2011	6/21/2011
Grand River Mutual Telephone Co.	5/20/2011	6/21/2011
Lathrop Telephone Co.	5/20/2011	6/21/2011

Halo and the "Swearingen" RLECs have continued to have some discussions after Halo submitted its letter request to the Bureau. Specifically, Halo sent a letter to Mr. England that reserved Halo's rights and its position that the parties are not yet within the § 252 process but nonetheless transmitted Halo's standard negotiating template terms and requested that the RLECs provide network and cost information that an ILEC must produce in § 252 negotiations upon request under 47 C.F.R. § 51.301(c)(8)(i) and (ii). The Halo correspondence is attached. *See* Attachment A. Counsel for the "Swearingen" RLECs has replied, and that document is attached as well. *See* Attachment B. Significantly, in the reply, counsel for the "Swearengen" RLECs admitted for the first time that the present "arrangement" between Halo and the RLECs is, as a matter of law, "no compensation" as a result of *T-Mobile*. The significance of this admission in the context of the Missouri ERE rules is further addressed below.

Finally, the RLECs consolidated response implies in several places, and directly asserts on pages 11-13, that Halo is intent on never actually acknowledging a "valid" "request for interconnection" by any ILEC, as part of some ruse to forever maintain "no compensation" and never negotiate. They are wrong. Halo has advised the Missouri RLECs that if they send a writing that clearly communicates a "request for interconnection" *and* "invoke[s] the negotiation and arbitration procedures in section 252 of the Act" (*see* § 20.11(e)) then Halo will do what the rule requires: negotiate over terms implementing the ILEC's § 251(b) and (c) duties and, if the ILEC wants interim payments then that is available too. This was not an idle commitment Halo never intended to honor.

Halo has received compliant 20.11(e) requests - that did "request interconnection" and did "invoke the negotiation and arbitration procedures contained in section 252 of the Act" - from (1) a national conglomerate of ILECs, many of which claim rural status, (2) a company with Arkansas and Oklahoma ILEC operations that claims rural status and (3) a group of 13 California ILECs that claim rural status. Halo has accepted those requests and has agreed they were compliant. Thus, Halo and all these companies are currently engaged in the § 252 process. Further, Halo has agreed to pay interim compensation at a negotiated price to the national company and is discussing the appropriate price with the others. The interim payment obligation for each of these companies is/will be effective back to the day after the compliant request was received. Halo is busily engaged in substantive negotiations with these companies, and topics include proposed agreement terms, direct IP-based interconnection, reciprocal compensation, jointly-provided access, and the balance of standard interconnection agreement topics. Further, and of particular relevance to some of the assertions by the Missouri RLECs, Halo's proposed terms include a provision relating to signaling. The current Halo version provides:

3.1 Signaling

3.1.1 Each Party will provide call control signaling in accordance with industry standards and applicable regulatory rules, including but not limited to 47 C.F.R. § 64.1601. Pending promulgation of final rules, the Parties will apply and use the proposed signaling rules set out in NPRM and FNPRM, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, FCC 11-13, _ FCC Rcd. _ (Feb. 9, 2011) and published at 76 Fed. Reg. 11632 (March 2, 2011).

3.1.2 If the Parties connect using SS7-based technologies they will follow applicable industry standards including: ISDN User Part ("ISUP") for trunk signaling; Transaction Capabilities Application Part ("TCAP") for Common Channel Signaling (CCS)-based features; and, the Parties will mutually interwork the Mobile Application Part ("MAP") for, among other things, user authentication, roaming, and SMS functionality.

3.1.3 If the Parties connect using IP-based technologies they will follow applicable industry standards including Session Initiation Protocol ("SIP") for call control, signaling, and support of features. In addition, the Parties will mutually interwork the Short Message Peer-to-Peer Protocol ("SMPP") to support SMS functionality.

3.1.4 IP-based and/or SS7 call control related information shall be shared between the Parties at no charge to either Party.

Halo has consistently expressed complete willingness to "negotiate" terms with the Missouri RLECs within any procedural and substantive context they choose. All they need to do is pick the context so that Halo can work within that context and negotiate terms that implement the duties flowing from that context.[13] Halo, however, will not negotiate outside of the ordered

[13] If the RLECs want to work within the § 251(a)(1) context, then Halo will do so but that necessarily means "the negotiation and arbitration procedures contained in section 252 of the Act" do not apply. *See Core Communications, Inc. v. SBC Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 8447, ¶ 18 (2004) ["Neither the general interconnection obligation of section 251(a) nor the interconnection obligation arising under section 332 is

and applicable standards or duties and Halo most certainly cannot be expected to negotiate with a gun to our head. Some of the Missouri RLECs claim the parties are already within the § 252 process. While Halo denies that is true, if we are incorrect then there can be no doubt whatsoever that those RLECs have egregiously violated the Commission's "good faith" rules, particularly § 51.301(c)(5), by engaging in blocking as a means to coerce Halo into agreeing to terms Halo would not otherwise accept.

II. The ILECs raise federal issues involving interstate rights and duties and FCC rules as part of their defenses.

1. Halo's service is federally-authorized and the traffic is predominately interstate.

a. The ILECs are seeking a determination of the scope of Halo's federal radio authorization and Halo's permitted activities under that radio authorization.

Halo – as a CMRS provider – has a federal right to interconnection, regardless of whether some of the traffic is or may be deemed "intrastate." *T-Mobile Order* ¶ 10, note 41. Halo's nationwide authorization grants "common carrier-interconnected" status, and the blocking in this case obviously denies exercise of "interconnected" status and prevents the exchange of jurisdictionally interstate traffic.[14] The ILECs devote many pages to denigrating Halo's service by coining phrases that express negative-sounding short-hand characterizations ("aggregator"; "wireless-in-the-middle" using a "dollop of radio frequency," etc.). The facts are what they are, and developing them will frankly not be that difficult; Halo continues to believe that, ultimately, there will turn out to be few if any truly contested basic facts, despite the attempt to spin the issues by the Missouri RLECs. The legal conclusions to be drawn from those facts all revolve around exclusively federal questions. The ILECs assert that much of the traffic is "really" "wireline," not wireless (although none deny that Halo and its customers use radios). *See* Missouri RLEC Response at p. 7. They claim the service "may" not be "mobile"[15] and Halo's service may not be "CMRS" at all. *Id* at pp. 8-10. The ILECs functionally claim that Halo, as a CMRS provider, cannot offer wireless-based telephone exchange service and/or exchange access

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implemented through the negotiation and arbitration scheme of section 252."]; *Qwest Corp., Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 5169, ¶ 23 (2004) [defining the term "interconnection agreement" for purposes of section 252, as limited that term to those "agreement[s] relating to the duties outlined in sections 251(b) and (c)"]; *see also, Qwest Corp. v. Public Utils. Comm'n of Colo.*, 479 F.3d 1184, 1197 (10th Cir. 2007) ["[T]he interconnection agreements that result from arbitration necessarily include only the issues mandated by § 251(b) and (c)."]. If the RLECs want to invoke the § 252 process they are free to do so at any time. All they need to do is "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act" *See* 47 C.F.R. § 20.11(e). After they do this and *if* the RLEC requests Halo to "submit to arbitration by the state commission" then Halo will comply with the rule and submit to arbitration by the state commission. But if the RLEC does use § 20.11(e) then Halo will do what § 252 contemplates: negotiate and if necessary arbitrate terms implementing the ILEC's §§ 251(b)(5) and 251(c) duties, by applying the standards in the Act and FCC rules.

[14] The ILECs may disagree with Halo's assertion that the great preponderance of the traffic is interstate but none of them deny that at least *some* is jurisdictionally interstate.

[15] For example, the RLECs assert that service to a customer using a USB dongle that can plug into an iPod, iPad, tablet or laptop is not "mobile" because it can *also* plug into a desktop – which according to the RLECs is "too large" to be "mobile." *See* RLEC Response Letter at p. 8. They conveniently forget that early "mobile" radiotelephone equipment was far larger than even a desktop computer, and required a "line" powered 12v connection. They also ignore that even if Halo's service is considered "fixed" it is still authorized as a "co-primary" service and is still "CMRS." *CMRS-Flex Order*, *supra*. The RLECs' challenge nonetheless clearly demonstrates that their issues raise matters within the Commission's exclusive jurisdiction.

service to "ESPs" because that is somehow reserved only to "LECs." *Id* at pp. 14-15. They are fundamentally challenging Halo's very right to exist, to compete as a telecommunications carrier and to provide its services at all. Halo's rights derive exclusively from federal law, which only the Commission can interpret and enforce. During the entire period this challenge persists, they intend to prevent Halo from providing service by blocking all traffic, and ultimately, put Halo out of business before Halo's rights are determined.

b. The ILECs' contentions that CMRS providers cannot provide telephone exchange/exchange access service to ESPs conflict with several FCC decisions, but, in any event, merely illustrate the predominantly interstate nature of Halo's service and the associated traffic.

One of the ILECs' major challenges to Halo's authority relates to Halo's service to an ESP end-user customer that happens to be using Halo's service to, in turn, provide IP-enabled voice-capable service. *Id* at pp. 9-11. In effect, Halo is acting as the ESP's "numbering partner."[16] Halo's primary position is that Halo is merely providing commercial radio service to a customer using its authorized spectrum through a wireless connection within the same MTA as the called party. Under the Commission's rules this would be intraMTA traffic subject to § 251(b)(5) (applied to CMRS through 47 C.F.R. §§ 20.11(c) and 51.701(b)(2)), as well as § 20.11(b)(2)). *See Local Competition Order* ¶¶ 1041-1045. The ILECs, however, appear to claim that, notwithstanding Halo's service delivery to its ESP end user customer in the same MTA, the calls do not in fact "originate" in the same MTA and that Halo is merely providing "wireless in the middle." *Id.*

There are several problems with this theory. First, the ILECs assert that *Halo* is somehow responsible for any and all of the access charges they claim are due.[17] They ignore that CMRS

[16] The FCC has directly held that CMRS providers can serve as "numbering partners" for ESPs. It required LECs to "port" numbers in to a CMRS provider upon request when the CMRS provider is serving the ESP, and it made special provisions within its "porting" rules to account for CMRS telephone exchange service to ESPs. *See* Report and Order, *Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, In the Matter of Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, WC Docket No. 07-243; CC Docket Nos. 95-116, 99-200; WC Docket Nos. 04-36, 07-244, FCC 07-188, ¶¶ 34-35, 22 FCC Rcd 19531, 19549-19550 (2007); Small Entity Compliance Guide, Local Number Portability (LNP), CC Docket Nos. 95-116, 99-200, WC Docket Nos. 07-243, 07-244, 04-36, DA 08-1317, ¶¶ 3-4 (2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-1317A1.pdf. *See also* 47 C.F.R. §§ 52.23(h)(1), (2), 52.31, 52.34.

[17] On page 10 the RLECs cite to MO&O, *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket 06-55, DA 07-709, 22 FCC Rcd 3513 (rel. Mar., 2007) for the proposition that Halo is required to have an interconnection agreement before it acts as a numbering partner. Notice that they refer to a "Section 251 arrangement" rather than a § 252 agreement. The word choice is important. Nonetheless, that is a slight mischaracterization of the Commission's holding because those are not the actual words that were used. The RLECs' fail to mention, however, the ongoing debate in WC Docket No. 10-143 whether the "the negotiation and arbitration procedures contained in section 252 of the Act" can apply when the competing carrier is attempting to deal with an RLEC. *See* Halo Letter Request, pp. 13-14. The Bureau might want to ask the RLECs how Halo is supposed to accomplish the duty to obtain a "Section 251 arrangement" they read into the *Time Warner* decision, and even more specifically whether that would occur "using the negotiation and arbitration procedures contained in section 252 of the Act."