

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

ALMA COMMUNICATIONS COMPANY
D/B/A ALMA TELEPHONE COMPANY;
CHARITON VALLEY TELEPHONE
CORPORATION; CHARITON VALLEY
TELECOM CORPORATION; CHOCTAW
TELEPHONE COMPANY; MID-MISSOURI
TELEPHONE COMPANY, A CORPORATE
DIVISION OF OTELCO, INC.; AND MOKAN
DIAL, INC.,

COMPLAINANTS

v.

HALO WIRELESS, INC. and
SOUTHWESTERN BELL
TELEPHONE COMPANY, D/B/A AT&T
MISSOURI

RESPONDENTS

CASE NO. TO-2012-0035

**HALO WIRELESS, INC.'S RESPONSE TO COMPLAINANTS' AND INTERVENOR-
COMPLAINANTS' JOINT MOTION FOR ORDER DIRECTING CASE BE HELD IN
ABEYANCE PENDING COMPLETION OF ENHANCED RECORD EXCHANGE RULE
PROCEEDINGS, AT&T'S CONCURRENCE IN COMPLAINANTS' JOINT MOTION
TO ABATE PROCEEDINGS, AND PUBLIC COUNSEL'S COMMENTS**

COMES NOW Halo Wireless, Inc. ("Halo"), by and through undersigned counsel, and submits to the Missouri Public Service Commission ("Commission") the following response to the Complainants' and Intervenor-Complainants' Joint Motion for Order Directing Case be Held in Abeyance Pending Completion of Enhanced Record Exchange Rule Proceedings ("Joint Motion"), AT&T's Concurrence in Complainants' Joint Motion to Abate Proceedings ("Concurrence"), and Public Counsel's Comments:

**HALO WIRELESS, INC.'S RESPONSE TO COMPLAINANTS' AND INTERVENOR-COMPLAINANTS'
JOINT MOTION FOR ORDER DIRECTING CASE BE HELD IN ABEYANCE PENDING COMPLETION
OF ENHANCED RECORD EXCHANGE RULE PROCEEDINGS, AT&T'S CONCURRENCE IN
COMPLAINANTS' JOINT MOTION TO ABATE PROCEEDINGS, AND PUBLIC COUNSEL'S
COMMENTS**

I. Introduction.

The relief requested by Complainants and Intervenor-Complainants in their Joint Motion, and concurred with by AT&T in its Concurrence, is inappropriate and unlawful.¹ Halo provides wireless service pursuant to its Radio Station Authorization ("RSA"), a nationwide license granted by the Federal Communications Commission ("FCC"). Halo's RSA permits Halo to register and operate fixed base stations and to support mobile, portable, and fixed subscriber stations throughout the country. The Opposition assumes that Halo is both an "originating carrier" and that Halo provides a "telecommunications service" as defined in the Enhanced Record Exchange Rules ("ERE Rules"). To the contrary, Halo does not fit within either definition. Therefore, the ERE Rules cannot and should not be applied to Halo's traffic.²

II. The Enhanced Record Exchange Rules do not apply and cannot lawfully be applied to allow blocking of Halo's traffic.

The relief requested in the Joint Motion is precisely backwards and wholly ignores the default arrangement provided by law: "bill and keep." Under that arrangement, no compensation is paid by either carrier to the other for transport and termination, and as a consequence, the terminating carrier is not "entitled to financial compensation."³ The Opposition is not entitled to any relief under the ERE Rules, pursuant to 4 CSR 240-29.130(2), for that reason alone.

¹ Complainants, Intervenor-Complainants, and AT&T are referred to herein as the "Opposition."

² If this proceeding for some reason does go forward, Halo reserves the right to demonstrate additional reasons why the ERE rules cannot apply and why the requested relief cannot be granted as a matter of law.

³ See 4 CSR 240-29.020(8) (providing that "Compensable traffic is telecommunications traffic that is transited or terminated over the LEC-to-LEC network, for which the transiting and/or terminating carrier is entitled to financial compensation).

The ERE Rules also do not apply on their face. 4 CSR 240-29.130(2) provides:

(2) A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver originating caller identification.⁴

A request for blocking made pursuant to 4 CSR 240-29.130(2) may only be made by a "terminating carrier," and the blocking request may only request blocking of an "originating carrier's" traffic. While Complainants and Intervenor-Complainants may each be "terminating carriers" under the ERE Rules, Halo is not an "originating carrier." 4 CSR 240-29.020(29) defines an "originating carrier" as:

(29) Originating carrier means the telecommunications company that is responsible for originating telecommunications traffic that traverses the LEC-to-LEC network. A telecommunications company whose retail telecommunications services are resold by another telecommunications company shall be considered the originating carrier with respect to such telecommunications for purposes of this rule. A telecommunications company performing a transiting traffic function is not an originating carrier.⁵

Halo is the source of the traffic going to AT&T and presumably to the Complainants and Intervenor-Complainants. For the definition of "originating carrier" to apply to Halo, though, Halo must be a "telecommunications company."⁶ The definition of a "telecommunications company" is provided for in 4 CSR 240-29.020(34), which was adopted by the Commission to address comments from certain wireless carriers. After a notice of proposed rulemaking containing the text of the proposed rule 4 CSR 240-29.020(34) was published in the Missouri

⁴4 CSR 240-29.130(2).

⁵4 CSR 240-29.020(29) (emphasis added).

⁶See 4 CSR 240-29.202(29).

Register on January 3, 2005, the Commission received comments. In the Order of Rulemaking on 4 CSR 240-29.020, T-Mobile, Nextel, and Cingular commented that “the Commission has no right to include wireless carriers in its rule definitions.”⁷ The Commission responded “[w]e will amend our definition to be entirely consistent with Missouri statutes,”⁸ and specifically noted that “[w]e have deleted wireless carriers from the definition of a telecommunications company as stated in 4 CSR 240-29 .020(34).”⁹

To accomplish this deletion, the Commission changed the text of the rule to read “Telecommunications Company means those companies as set forth by Section 386.020(51)”¹⁰ RSMo Supp, 2004.”¹¹ Under the cited Missouri statutory provision:

(52) “Telecommunications company” includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications services for hire, sale or resale within this state;¹²

This definition clearly provides that an entity is a “Telecommunications company” only if it provides a “telecommunications service.”¹³ The statute later defines the term “telecommunications service” in subpart (54):

⁷ Orders of Rulemaking, Missouri Register, June 15, 2005, Vol. 30, No. 12, p. 1381.

⁸ *Id.*

⁹ *Id.* at 1382.

¹⁰ The rule cites to subsection (51), but the correct reference is obviously subsection (52).

¹¹ 4 CSR 240-29.020(34).

¹² 386.020(52), RSMo Supp. 2004 (emphasis added).

¹³ *See id.*

(54) “Telecommunications service”, the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications services do not include:

...

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;¹⁴

Reading the relevant Commission rules together with section 386.020(52) and (54) RSMo Supp, 2004, the Commission purposefully and specifically excepted wireless carriers from the definition of “originating carrier” within the ERE Rules.

Halo is operating pursuant to an FCC RSA that grants federal permission to offer interconnected common carrier service on a nationwide basis. Under the Missouri statute’s definition, this is not a “telecommunications service.”¹⁵ Halo is engaged in the “offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations,” and thus Halo’s service falls under the exception to “telecommunication service” in section 386.020(54) RSMo Supp, 2004. Halo is not a “telecommunications company,” and as a consequence, cannot be an “originating carrier,” under the ERE Rules. The Opposition assumes that Halo is an “originating carrier,” but provides no argument to support that assumption because they cannot. The ERE Rules relating to “originating carrier” and blocking of “originating carrier” traffic simply do not apply to Halo.

¹⁴*Id.* at 386.020(54).

¹⁵*See id.*

III. Federal law prevents the application of the Enhanced Record Exchange Rules.

Halo is conducting business pursuant to federal authority – Halo’s RSA. The traffic in issue is subject to the FCC’s rules and requirements for interconnection. States cannot interfere with this authorization, and any attempt to restrict exercise of Halo’s federal rights is preempted and not effective.

This is particularly so given the extent to which there is jurisdictionally interstate traffic traversing the interconnection arrangement with AT&T and much, if not all, of the traffic going to the Opposition here is jurisdictionally interstate. State rules cannot authorize the blocking of interstate traffic. Nor can state rules impose obligations that go beyond those imposed by the FCC with regard to signaling or negotiations, including the processes or who has the burden. The Opposition is subject to the FCC’s exclusive jurisdiction for the interstate traffic involved here. The FCC has made it absolutely clear that carriers cannot block interstate traffic absent specific FCC authorization and blocking violates section 201 of the Communications Act.¹⁶

Further, section 332(c)(3) of the Communications Act prevents the Commission from authorizing or ordering the blocking of the traffic at issue here. Section 332(c)(3) of the Communications Act provides, “Notwithstanding sections 152(b) and 221(b) of this title, no State ... shall have *any authority to regulate* the entry of ... any commercial mobile service.”¹⁷ The Commission’s authorization or ordering of the blocking contemplated by the Opposition would constitute clearly prevent Halo’s entry and operation and thus would be unlawful.

¹⁶ See, Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, WC Docket No. 10-90 et al., FCC 11-161 ¶¶ 734 (and notes 1278, 1279, 1280, 1306), 839 (and note 1601), 973-974.) (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), corrected by Erratum (rel. Feb. 6, 2012), modified by Order on Reconsideration (FCC 11-189) (rel. Dec. 23, 2011) clarified by Order, DA-1247 (rel. Feb. 3, 2012), pets. for review pending, *Direct Commc’ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

¹⁷ 47 U.S.C. § 332(c)(3)(A)(emphasis added).

Similarly, the Complainants and Intervenor-Complainants have “214 authority.” Section 214(a) of the Act and FCC’s Part 63 rules address carriers’ desire to cease the interchange of traffic with another carrier. Under the relevant federal law and FCC rules, the carrier seeking to cease interchanging traffic must seek advance permission from the FCC to do so. There are specific showings that must be made.¹⁸ The applicant must state whether any other carriers consent.¹⁹ For the record, Halo does not so consent.

IV. Conclusion.

The relief requested by Complainants and Intervenor-Complainants in their Joint Motion, and concurred with by AT&T in its Concurrence, must be denied. Halo is not a “telecommunications company,” and therefore, is not and cannot be an “originating carrier” as defined by the ERE Rules. The “blocking” portion of the rule therefore simply cannot be applied as against Halo. Any decision by the Commission to authorize or order blocking pursuant to the ERE Rules would violate both state and federal law.

Rather than holding this case in abeyance to allow the Complainants and Intervenor-Complainants to unlawfully and inappropriately initiate blocking pursuant to the totally inapplicable ERE Rules, for the reasons asserted in Halo’s Response to the Application for Rejection of Portions of an Interconnection Agreement, the Commission should issue an order denying and dismissing this proceeding.

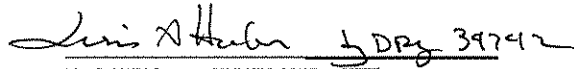
WHEREFORE, for the foregoing reasons, Halo respectfully requests that the Commission issue an order denying Complainants’ and Intervenor-Complainants’ Joint Motion

¹⁸See, e.g., 47 C.F.R. § 63.60(b)(5), § 63.62(b) and (e), § 63.501.

¹⁹*Id.* at § 63.501 (p).

for Order Directing Case be Held in Abeyance Pending Completion of Enhanced Record Exchange Rule Proceedings. The Commission must instead dismiss the entire proceeding, because the Commission completely lacks the power to grant any of the requested relief.

Respectfully submitted,

Handwritten signature of Louis A. Huber, III, with the number 39742 written to the right.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been filed with the Missouri Public Service Commission electronic filing system and has been e-mailed to the following counsel of record this 21st day of February, 2012:

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