PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc. 9594-TI-100

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

I. Introduction.

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

Halo's position is that it is providing commercial mobile radio service ("CMRS")-based telephone exchange service (as defined in the Communications Act of 1934, as amended by the Communications Act of 1996 (the "Act"), 47 U.S.C. § 153(47)) to end user customers, and all of the communications at issue originate from end user wireless customer premises equipment ("CPE") (as defined in the Act, 47 U.S.C. § 153(14))[1] that is located in the same MTA as the terminating location. In other words, Halo contends that all of the traffic at issue is CMRS intraMTA traffic that is subject to section 251(b)(5) of the Act. None of the traffic is associated

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

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

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

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

[2] *See* 47 C.F.R. §§ 51.701(b)(2) and § 24.202(a).

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

[4] *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

[5] *Worldcom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

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

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

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

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

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

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

II. Halo's Business Model.

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

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

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

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

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

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

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

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

[9] Transcom also has a very significant and growing amount of calls that originate from IP endpoints. Those are obviously not "IP-in-the-Middle" under even the test advanced by TDS *et al*.

the call *to* the PSTN is also immune.[10] Enhanced services were defined long before there was a public Internet. ESPs do far more than just hook up "modems" and receive calls. They provide a wide set of services and many of them involve calls *to* the PSTN.[11] The FCC observed in the first decision that created what is now known as the "ESP Exemption" that ESP use of the PSTN resembles that of the "leaky PBXs" that existed then and continue to exist today, albeit using much different technology. Even though the call started somewhere else, as a matter of law a Leaky PBX is still deemed to "*originate*" the call that then *terminates* on the PSTN.[12] As noted, the FCC has expressly recognized the bidirectional nature of ESP traffic, when it observed that ESPs "may use incumbent LEC facilities to *originate and terminate* interstate calls" (emphasis added). Halo's and Transcom's position is simply the direct product of Congress' choice to codify the ESP Exemption, and neither the FCC nor state commissions may overrule the statute.

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

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

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

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

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

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

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

[14] *See* § 252(d)(2)(A)(i), which imposes the "additional cost" mandate on "calls that originate on the network facilities of the other carrier."

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

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

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

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

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

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

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

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

III. Specific Responses to Issues.

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

A. Corporate information for Halo Wireless, Inc.

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

Halo Wireless, Inc. Officers, Directors and Stockholders

Name	Title	Percentage of Stock Ownership
Timothy Terrell	Equity Interest holder	40%
Gary Shapiro	Equity Interest holder	10%
Scott Birdwell	Equity Interest holder	50%
Carolyn Malone	Secretary / Treasurer	0%
Jeff Miller	Chief Financial Officer	0%
Russell Wiseman	President	0%

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

B. Corporate information for Transcom Enhanced Services, Inc.

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

Transcom Enhanced Services, Inc. Officers, Directors and Stockholders

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

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

C. Services provided by Halo to Transcom and Consumers.

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

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

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

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

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

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

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

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

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

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

See response under Issue 3 below.

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

A. Clarification as to "Terminating."

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

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

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

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

B. Response to actual concern.

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

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

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

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

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

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

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

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

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

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

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

[22] *T-Mobile* at Note 57 expressly provides that "Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination."

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

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

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

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

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

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

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

> Calling Party Number. Information sent in the forward direction to identify the calling party and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, address presentation restriction indicator, screening indicator, and address signals.
>
> Charge Number. Information sent in either direction indicating the chargeable number for the call and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, and address signals.

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

A. SS7 ISUP IAM Calling Party Number Parameter Content.

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

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

> When a SIP INVITE arrives at a PSTN gateway, the gateway SHOULD attempt to make use of encapsulated ISUP (see [3]), if any, within the INVITE to assist in the formulation of outbound PSTN signaling, but SHOULD also heed the security considerations in Section 15. If possible, the gateway SHOULD reuse the values of each of the ISUP parameters of the encapsulated IAM as it formulates an IAM that it will send across its PSTN interface. In some cases, the gateway will be unable to make use of that ISUP - for example, if the gateway cannot understand the ISUP variant and must therefore ignore the encapsulated body. Even when there is comprehensible encapsulated ISUP, the relevant values of SIP header fields MUST 'overwrite' through the process of translation the parameter values that would have been set based on encapsulated ISUP. In other words, the updates to the critical session context parameters that are created in the SIP network take precedence, in ISUP-SIP-ISUP bridging cases, over the encapsulated ISUP. This allows many basic services, including various sorts of call forwarding and redirection, to be implemented in the SIP network.
>
> For example, if an INVITE arrives at a gateway with an encapsulated IAM with a CPN field indicating the telephone number +12025332699, but the Request-URI of the INVITE indicates 'tel:+15105550110', the gateway MUST use the telephone number in the Request-URI, rather than the one in the encapsulated IAM, when creating the IAM that the gateway will send to the PSTN. Further details of how SIP header fields are translated into ISUP parameters follow.

B. SS7 ISUP IAM Charge Number Parameter Content.

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

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

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

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

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

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

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

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

A. Jurisdiction.

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

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

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

B. Substance.

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

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Attorneys for Halo Wireless, Inc. and Transcom Enhanced Services, Inc.

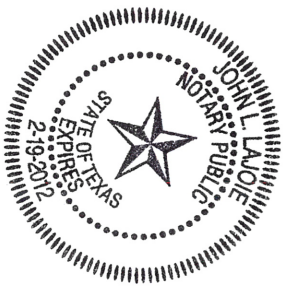
VERIFICATION OF HALO WIRELESS, INC.

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

Russell Wiseman
President, Halo Wireless, Inc.

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

NOTARY PUBLIC, STATE OF TEXAS



VERIFICATION OF TRANSCOM ENHANCED SERVICES, INC.

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

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

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

SHEILA O'FLINN
MY COMMISSION EXPIRES
February 27, 2013

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 1

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

The following constitutes the order of the Court.

Signed May 16, 2006

Harlin DeWayne Hale
United States Bankruptcy Judge

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

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CHAPTER 11**
	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

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

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

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

Findings of Fact

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions of Law

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

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

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

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

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

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

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

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

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

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

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

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

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

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

30. The Plan as proposed is feasible.

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

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

It is therefore,

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

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

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

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

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

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

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

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

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

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

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

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

*** END OF ORDER ***

PREPARED BY:

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

EXHIBIT 2

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

The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 20, 2007 **United States Bankruptcy Judge**

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

IN RE:	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	
	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	**ADVERSARY NO. 06-03477-HDH**
	§	
Defendants.	§	
	§	

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

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

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

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

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

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

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

(a) Transcom is not an interexchange (long distance) carrier.

(b) Transcom does not hold itself out as a long distance carrier.

(c) Transcom has no retail long distance customers.

(d) The efficiencies of Transcom's network result in reduced rates for its customers.

(e) Transcom's system provides its customers with enhanced capabilities.

(f) Transcom's system changes the content of every call that passes through it.

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

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

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

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

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

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

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

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

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

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

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

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

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

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

In the Counterclaim, paragraph 94 makes the following assertion:

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

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

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

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

###END OF ORDER###

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EXHIBIT 3

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

427 B.R. 585
(Cite as: 427 B.R. 585)

C

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

No. 05–31929–HDH–11.
April 29, 2005.

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

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

So ordered.

West Headnotes

[1] Bankruptcy 51 ⚿2048.2

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

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

[2] Bankruptcy 51 ⚿3111

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

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

[3] Bankruptcy 51 ⚿3111

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

Telecommunications 372 ⚿866

372 Telecommunications

427 B.R. 585
(Cite as: 427 B.R. 585)

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

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

585 *MEMORANDUM OPINION

HARLIN D. HALE, Bankruptcy Judge.

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT & T ***586** Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").[FN1] At the hearing, the Debtor, AT & T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

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

I. Background Facts

This case was commenced by the filing of a voluntary Bankruptcy Petition for relief under Chapter 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale provider of transmission services providing its customers an Internet Protocol ("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

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

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

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

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

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

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

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

II. Issues

The issues before the Court are:

(1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and

(2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.[FN2]

FN2. AT & T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT & T argues that the entire argument over cure amounts is a difference of about $28,000.00 that AT & T is willing to forgo for now. However, AT & T later states in its objection (and argued at the hearing):

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

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

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

sent Motion.

***588 III. Analysis**

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

FN3. The parties agree that the Master Agreement is an executory contract.

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

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

[1][2] AT & T argues that this is where the Court's inquiry should cease. Since AT & T has suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT & T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT & T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. *See In re Liljeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir.2002); *In re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir.1985).

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

FN4. See n.2 above.

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

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

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

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

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

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

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

(a) Debtor is not an interexchange (long-distance) carrier.

(b) Debtor does not hold itself out as a long-distance carrier.

(c) Debtor has no retail long-distance customers.

(d) The efficiencies of Debtor's network result in reduced rates for its customers.

(e) Debtor's system provides its customers with enhanced capabilities.

(f) Debtor's system changes the content of every call that passes through it.

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

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

427 B.R. 585
(Cite as: 427 B.R. 585)

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

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

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

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

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

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

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

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

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

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

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

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

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

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

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

IV. Conclusion

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

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

A separate order will be entered consistent with this memorandum opinion.

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

EXHIBIT 4

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

The following constitutes the order of the Court.

Signed May 28, 2003.

United States Bankruptcy Judge

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

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

ORDER GRANTING MOTION FOR ENTRY OF ORDERS (i) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX; (ii) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iii) ESTABLISHING AUCTION DATE, RELATED DEADLINES AND BID PROCEDURES; (iv) APPROVING THE FORM AND MANNER OF SALE NOTICES; AND (v) APPROVING BREAK-UP FEES IN CONNECTION WITH THE SOLICITATION OF HIGHER OR BETTER OFFERS

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

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

FOUND AND DETERMINED THAT:[2]

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

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sales Motion.

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

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

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

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

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

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

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

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

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

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

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

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

outcome that will achieve far less value for creditors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE, IT IS HEREBY:

General Provisions

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

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

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

Approval of the Agreement

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

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

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

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

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

Assignment and Assumption of Assumed Contracts

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

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

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

Transfer of Assets

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

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

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

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

Additional Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF ORDER # #

EXHIBIT A TO SALE ORDER

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

EXHIBIT A TO SALE ORDER

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

EXHIBIT A TO SALE ORDER

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

EXHIBIT A TO SALE ORDER

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

Schedule JSM-1

EXHIBIT 5

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

Federal Communications Commission

Wireless Telecommunications Bureau

RADIO STATION AUTHORIZATION

LICENSEE: HALO WIRELESS

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

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

FCC Registration Number (FRN): 0018359711

Grant Date	Effective Date	Expiration Date	Print Date
01-27-2009	01-27-2009	11-30-2018	01-27-2009

Market Name: Nationwide

Channel Block: 003650.00000000 - 003700.00000000 MHz

Waivers/Conditions:

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

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