

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

<b>HALO WIRELESS, INC.,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. TC-2012-0331</b>
	)	
<b>CRAW-KAN TELEPHONE</b>	)	
<b>COOPERATIVE, INC., et al.,</b>	)	
	)	
<b>Respondents.</b>	)	

**Motion to Dismiss Halo Complaint  
as to Respondents Alma Communications Company d/b/a Alma Telephone Company,  
Choctaw Telephone Company, and MoKAN Dial Inc.,  
for Lack of Compliance with 4 CSR 240-29.130 (9)**

**Expedited Relief Requested**

For their Motion to Dismiss Halo's April 2, 2012 Complaint, for expedited relief allowing the blocking of traffic scheduled for April 3, 2012 to be immediately rescheduled, all for Halo's Complaint's Lack of Compliance with 4 CSR 240-29.130 (9), Respondents Alma Communications Company d/b/a Alma Telephone Company ("Alma"), Choctaw Telephone Company ("Choctaw"), and MoKan Dial, Inc. ("MoKan"), collectively "Movants", state as follows:

1. On February 22, 2012, pursuant to the Commission's Enhanced Record Exchange Rule (ERE), Movants all issued notices of blocking requests to Halo, attached hereto as Exhibits 1, 2, and 3 respectively.

2. Said notices were received by Halo on February 24, 2012. See attachments 4, 5, and 6 hereto.

3. By February 24, 2012, Halo was on notice that blocking would be effectuated April 3, 2012, unless Halo took certain actions, as specified by the ERE, in order to prevent blocking.

4. 4 CSR 240-29.130 (9) required Halo, if it intended to dispute Movants' blocking notices, to "immediately" seek action by the commission through the filing of a formal complaint, which complaint "shall provide all relevant evidence refuting any stated reasons for blocking such traffic", and such complaint "shall include a request for expedited resolution".

5. Halo's April 2, 2012 Complaint, filed at 6:13 PM the day before Movants' blocking requests were scheduled to be effectuated by AT&T, failed to comply with 4 CSR 240-029.130 (9) on the following grounds:

- a. the Complaint was not filed "immediately";
- b. the Complaint fails to refute the specific grounds for blocking;
- c. the Complaint failed to include a request for expedited resolution.

6. Halo's Complaint, at paragraphs 7 and 8, states that it seeks no "affirmative relief" from this Commission, that it filed the Complaint "out of an abundance of caution", and "under protest", as an "ostensibly-required response" to the blocking requests, and that it is requesting this Commission to declare that it lacks the jurisdiction or authority to permit blocking.

7. Missouri is permitted to enforce its ERE by virtue of 47 USC 253 (b). This statute provides that, in removing barriers to entry to the provision of telecommunications service, nothing affects the ability of Missouri “to impose, on a competitively neutral basis....requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers”, all of which the ERE does.

8. Halo’s Complaint belies an improper purpose. The purpose of the Complaint is for Halo to perform its jurisdictional tango one more time, rather than comply with the ERE.

9. Instead of filing a Complaint in compliance with the ERE, contesting the grounds upon which the blocking request was made, Halo is once again touting its theories as a reason for this Commission not to permit the blocking. Halo ignores that the ERE is self-executing, and will result in blocking without Commission intervention, unless Halo files a proper Complaint that comports with the ERE. There is no provision of the ERE that contemplates the Commission will entertain a complaint for declaratory relief asking the Commission to declare it lacked jurisdiction to adopt the very rule being enforced.

**Halo Complaint not filed immediately:**

10. Halo received notice of Movants’ blocking requests, and was advised of the requirements of the Enhanced Record Exchange Rule in case Halo chose to dispute the grounds for blocking, on February 24, 2012. This was 39 days prior to the April 3, 2012 blocking date. Halo’s Complaint was filed on April 2, 2012, 38 days after receipt of that notice, only one day before the blocking date.

During that 39 day period, on March 15, 2012 Halo informed Movants that it disputed their blocking request. See Exhibit 7 hereto. Yet it did not then immediately file a complaint with the Commission. Instead it waited an additional 18 days.

Halo's April 2, 2012 Complaint was not filed "immediately" after Halo determined it would dispute the blocking, as the ERE requires.

**Halo Complaint does not refute stated reasons for blocking:**

11. Movants' blocking notices stated the following grounds for blocking:
  - a. Halo failed to pay invoices for post-bankruptcy termination services;
  - b. Halo sent landline-originated traffic under the auspices of a CMRS/ILEC interconnection agreement;
  - c. Halo interLATA traffic was placed on the LEC-LEC-network for termination to Movants;
  - d. Some traffic was originated with use of feature group D protocol trunking arrangements;
  - e. Halo failed to provide, or altered, originating caller identification information;
  - f. the FCC had ruled that the Halo/Transcom attempt to "reoriginate" landline traffic over a wireless link did not convert landline originated traffic to CMRS originated calls.
  
12. Halo's April 2, 2012 Complaint, exclusive of attachments and relief prayer, is 42 pages and 114 paragraphs in length. Nowhere in those 42 pages and 114 paragraphs does Halo "provide all relevant evidence refuting any stated reasons for blocking", as is specifically

required of Halo's Complaint by 29.130(9).<sup>1</sup> Having failed to contest these grounds as listed in (a) through (f) in paragraph 11 above, Halo's Complaint must be deemed as having admitted them. Otherwise there would be no reason for the ERE to require the Complaint to provide all relevant evidence refuting the stated reasons for blocking set forth in the blocking request.

#### **No request for expedited resolution**

13. 29.130(9) required Halo's Complaint to include a request for expedited resolution. Halo's Complaint of April 2, 1012 contains none.

#### **Bankruptcy Stay**

14. Finally, Halo states that the blocking request violates the automatic stay. This argument fails in view of the Bankruptcy Court's Order of October 26, 2011, attached to Halo's Complaint as Exhibit E. In that Order the Bankruptcy Court ruled that the automatic stay did not apply to the Missouri Enhanced Record Exchange Rule Proceedings. The only limitation was the Order's proviso that no state proceedings would be permitted if they: (A) liquidated the amount of any claim against Halo; or (B) affected the debtor-creditor relationship between Halo and a creditor or potential creditor.

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<sup>1</sup> Halo's Complaint fails to comport with the abbreviated inter-carrier dispute process contemplated by CSR 240-029.130. Instead of focusing on contesting specific grounds set forth in Movants' blocking notice, Halo once again replays its litany of theories as to its licenses, business model constructs, traffic origination claims, relationship with Transcom, reasons for filing bankruptcy, and recitations of its various appeals of FCC Orders, Bankruptcy Orders, and state administrative proceeding Orders. Halo continues to spew these same claims and theories, despite the FCC's specific rejection of them. At paragraphs 1005-1006 of the FCC's November 18, 2011 Report and Order in Case No. 11-161, the FCC ruled that, by routing Transcom landline originated traffic over a wireless link before delivering it to the ILEC network, Halo did not convert these calls to CMRS-originated traffic.

Blocking the traffic would neither liquidate a claim amount, nor affect the debtor-creditor relationship that pre-existed the block.

WHEREFORE, on the basis of the foregoing, and the accompanying motion for expedited treatment, Movants request that Halo's Complaint be dismissed against Movants, and that AT&T be permitted to immediately execute the blocking previously scheduled for April 3, 2012.

Respectfully submitted,

/s/Craig S. Johnson  
Craig S. Johnson  
Mo Bar # 28179  
Johnson & Sporleder, LLP  
304 E. High St., Suite 200  
P.O. Box 1670  
Jefferson City, MO 65102  
(573) 659-8734  
(573) 761-3587 FAX  
[cj@cjlaw.com](mailto:cj@cjlaw.com)

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was electronically mailed this 3rd day of April, 2012 to PSC Staff Counsel, to the Office of the Public Counsel, to counsel for AT&T Missouri, to counsel for the Mo RLECs other than Movants, and to counsel for Halo Wireless Inc.

/s/Craig S. Johnson

Craig S. Johnson



Craig S. Johnson  
Andrew J. Sporleder  
Attorneys at Law

February 22, 2012

**Via email and certified mail, return receipt requested**

Russel Wiseman, President  
Halo Wireless Inc  
2351 West Northwest Highway  
Suite 1204  
Dallas, TX 75220

Re: Notice of Request for Blocking of Traffic of Halo Wireless Inc. terminating to Alma Telephone Corporation, d/b/a Alma Telephone Company, made pursuant to the Missouri Enhanced Record Exchange Rule of the Missouri Public Service Commission.

Dear Mr. Wiseman:

Please be notified that to Alma Telephone Corporation, d/b/a Alma Telephone Company (Alma) has requested that AT&T Missouri block Halo Wireless Traffic terminating to Alma pursuant to Missouri Public Service Commission Rule 4 CSR 240-29.130. A copy of that request is attached hereto for your reference.

Pursuant to the Commission Rule, Halo Wireless is notified of the reasons for, date of, and actions it can take to avoid, this traffic blocking.

Reasons for Blocking Request

Alma has invoiced Halo for post-Halo bankruptcy petition traffic termination services. Halo has failed to pay any part of those invoices. Halo has sent landline-originated traffic to Alma under the auspices of a CMRS/ILEC interconnection agreement. Halo has placed interLATA traffic on the LEC-to-LEC network for termination to Alma. Some of this traffic was originated with the use of feature group D protocol trunking arrangements. Halo has failed to provide, or has altered, originating caller identification information for this traffic. The FCC, at paragraphs 1005 -1006 of its November 18, 2011 Order 11-161 specifically analyzed and rejected Halo's contention that it "re-originated" landline toll traffic of its affiliate Transcom and converted it to intraMTA wireless traffic by inserting a wireless connection at its "base stations". Thus FCC stated that such "re-origination of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position."

*Exhibit 1*



Date Traffic is Requested to be Blocked

April 3, 2012.

Actions Halo Wireless Can Take to Prevent Blocking

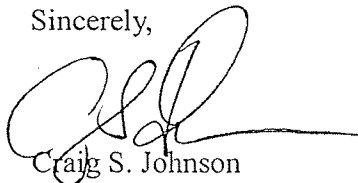
Pursuant to 4 CSR 240-Chapter 29, Halo Wireless may take any of the following actions to prevent implementation of this blocking request:

- a. use alternate means of delivering traffic subject to blocking;
- b. file a formal complaint before the Missouri Public Service Commission providing all relevant evidence refuting the stated reasons for blocking;
- c. any other means of prevention set forth in 4 CSR 240-Chapter 29.

If Halo chooses any of these alternatives, please notify myself, AT&T Missouri, and John Van Eschen no later than March 12, 2012 to avoid effectuation of traffic blocking.

If any questions or concerns arise regarding this notice, please direct them to me.

Sincerely,



Craig S. Johnson

cc: John Van Eschen, Mgr. MoPSC Telecommunications Dept.  
William Voight  
Larry Sullivan  
Leo Bub



Craig S. Johnson  
Andrew J. Sporleder  
Attorneys at Law

February 22, 2012

**Via email and certified mail, return receipt requested**

Russel Wiseman, President  
Halo Wireless Inc  
2351 West Northwest Highway  
Suite 1204  
Dallas, TX 75220

Re: Notice of Request for Blocking of Traffic of Halo Wireless Inc. terminating to Choctaw Telephone Company, made pursuant to the Missouri Enhanced Record Exchange Rule of the Missouri Public Service Commission.

Dear Mr. Wiseman:

Please be notified that Choctaw Telephone Company (Choctaw) has requested that AT&T Missouri block Halo Wireless Traffic terminating to Choctaw pursuant to Missouri Public Service Commission Rule 4 CSR 240-29.130. A copy of that request is attached hereto for your reference.

Pursuant to the Commission Rule, Halo Wireless is notified of the reasons for, date of, and actions it can take to avoid, this traffic blocking.

Reasons for Blocking Request

Choctaw has invoiced Halo for post-Halo bankruptcy petition traffic termination services. Halo has failed to pay any part of those invoices. Halo has sent landline-originated traffic to Choctaw under the auspices of a CMRS/ILEC interconnection agreement. Halo has placed interLATA traffic on the LEC-to-LEC network for termination to Choctaw. Some of this traffic was originated with the use of feature group D protocol trunking arrangements. Halo has failed to provide, or has altered, originating caller identification information on this traffic. The FCC, at paragraphs 1005 -1006 of its November 18, 2011 Order 11-161 specifically analyzed and rejected Halo's contention that it "re-originated" landline toll traffic of its affiliate Transcom and converted it to intraMTA wireless traffic by inserting a wireless connection at its "base stations". Thus FCC stated that such "re-origination of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position."

Date Traffic is Requested to be Blocked

April 3, 2012.

Exhibit 2

Actions Halo Wireless Can Take to Prevent Blocking

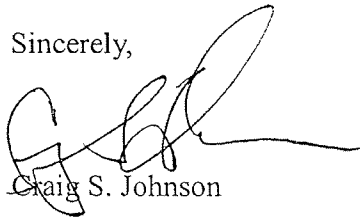
Pursuant to 4 CSR 240-Chapter 29, Halo Wireless may take any of the following actions to prevent implementation of this blocking request:

- a. use alternate means of delivering traffic subject to blocking;
- b. file a formal complaint before the Missouri Public Service Commission providing all relevant evidence refuting the stated reasons for blocking;
- c. any other means of prevention set forth in 4 CSR 240-Chapter 29.

If Halo chooses any of these alternatives, please notify myself, AT&T Missouri, and John Van Eschen no later than March 12, 2013 to avoid effectuation of traffic blocking.

If any questions or concerns arise regarding this notice, please direct them to me.

Sincerely,



Craig S. Johnson

cc: John Van Eschen, Mgr. MoPSC Telecommunications Dept.  
William Voight  
Debbie Nobles  
Leo Bub



Craig S. Johnson  
Andrew J. Sporleder  
Attorneys at Law

February 22, 2012

**Via email and certified mail, return receipt requested**

Russel Wiseman, President  
Halo Wireless Inc  
2351 West Northwest Highway  
Suite 1204  
Dallas, TX 75220

Re: Notice of Request for Blocking of Traffic of Halo Wireless Inc. terminating to MoKan Dial Inc., made pursuant to the Missouri Enhanced Record Exchange Rule of the Missouri Public Service Commission.

Dear Mr. Wiseman:

Please be notified that MoKan Dial Inc. (MoKan) has requested that AT&T Missouri block Halo Wireless Traffic terminating to MoKan pursuant to Missouri Public Service Commission Rule 4 CSR 240-29.130. A copy of that request is attached hereto for your reference.

Pursuant to the Commission Rule, Halo Wireless is notified of the reasons for, date of, and actions it can take to avoid, this traffic blocking.

Reasons for Blocking Request

MoKan has invoiced Halo for post-Halo bankruptcy petition traffic termination services. Halo has failed to pay any part of those invoices. Halo has sent landline-originated traffic to MoKan under the auspices of a CMRS/ILEC interconnection agreement. Halo has placed interLATA traffic on the LEC-to-LEC network for termination to MoKan. Some of this traffic was originated with the use of feature group D protocol trunking arrangements. Halo has failed to provide, or has altered, originating caller identification information on this traffic to MoKan. The FCC, at paragraphs 1005 -1006 of its November 18, 2011 Order 11-161 specifically analyzed and rejected Halo's contention that it "re-originated" landline toll traffic of its affiliate Transcom and converted it to intraMTA wireless traffic by inserting a wireless connection at its "base stations". Thus FCC stated that such "re-origination of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position."

Date Traffic is Requested to be Blocked

April 3, 2012.

*Exhibit 3*

Actions Halo Wireless Can Take to Prevent Blocking

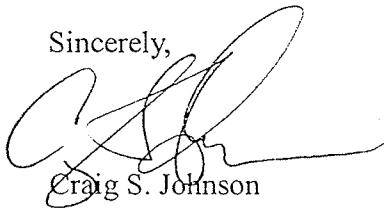
Pursuant to 4 CSR 240-Chapter 29, Halo Wireless may take any of the following actions to prevent implementation of this blocking request:

- a. use alternate means of delivering traffic subject to blocking;
- b. file a formal complaint before the Missouri Public Service Commission providing all relevant evidence refuting the stated reasons for blocking;
- c. any other means of prevention set forth in 4 CSR 240-Chapter 29.

If Halo chooses any of these alternatives, please notify myself, AT&T Missouri, and John Van Eschen no later than March 12, 2013 to avoid effectuation of traffic blocking.

If any questions or concerns arise regarding this notice, please direct them to me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig S. Johnson', is written over the printed name.

Craig S. Johnson

cc: John Van Eschen, Mgr. MoPSC Telecommunications Dept.  
William Voight  
Debbie Nobles  
Leo Bub

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Samuel Woods</i></p>	
<p>1. Article Addressed to:</p> <p>Russel Wiseman, Preident Halo Wireless Inc. 2351 West Northwest Highway Suite 1204 Dallas, TX 75220</p>		<p>B. Received by (Printed Name) C. Date of Delivery</p> <p><i>Samuel Woods</i> <i>2/24/12</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>7003 1010 0002 5409 7900</p>	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

Exhibit 4

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Russel Wiseman, President  
 Halo Wireless INC.  
 2351 West Northwest Highway  
 Suite 1204  
 Dallas, TX 75220

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature [Signature] ☐ Agent ☐ Addressee  
 B. Received by (Printed Name) Russel Wiseman C. Date of Delivery 2/24/11  
 D. Is delivery address different from item 1? ☐ Yes ☐ No  
 If YES, enter delivery address below:

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number  
 (Transfer from service label)

7003 1010 0002 5409 7894

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

Exhibit 5

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Russel Wiseman, President  
Halo Wireless Inc.  
2351 West Northwest Highway  
Suite 1204  
Dallas, TX 75220

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent  
☒ Addressee  
B. Received by (Printed Name) C. Date of Delivery  
Russel Wiseman 2/24/12  
D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## 3. Service Type

☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

☐ Yes

## 2. Article Number

(Transfer from service label)

7003 1010 0002 5409 7887

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Exhibit 6



**McGUIRE, CRADDOCK & STROTHER, P.C.**

2501 N. HARWOOD  
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[www.mcslaw.com](http://www.mcslaw.com)

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March 15, 2012

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Via FAX: 314.247.0014

Craig S. Johnson  
JOHNSON & SPROLEDER, LLP  
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P.O. Box 1670  
Jefferson City, Missouri 65102

CM-RRR No. 71969008911147526356  
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Via FAX: 573.761.3587

W. R. England, III  
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Jefferson City, Missouri 65102-0456

CM-RRR No. 71969008911147526400  
Via Email: [trip@brydonlaw.com](mailto:trip@brydonlaw.com)  
Via FAX: 573.634.7431

RE: File No. TO-2012-0035 - Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corporation, Chariton Valley Telecom Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, a corporate division of Otelco, Inc., and MoKAN DIAL, Inc. v. Halo Wireless, Inc. and Southwestern Bell Telephone Company d/b/a AT&T Missouri;

Improper Blocking Requests from Alma Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial, Inc. (the "Johnson Clients"); and

Improper Blocking Requests from Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Goodman Telephone Company, Granby Telephone Company, Iamo Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, and Seneca Telephone Company (the "England Clients").

Leo J. Bub  
Craig S. Johnson  
W. R. England, III  
March 15, 2012  
Page 2

Dear Mssrs. Bub, Johnson and England:

By order dated February 22, 2012 (the "Abeyance Order"), the Missouri Public Service Commission ("MOPSC") granted the complainants' motion to hold the above-referenced proceeding in abeyance pending the completion of any proceedings under Missouri's enhanced record exchange rules (the "ERE Rules"). Immediately after issuance of the Abeyance Order, Halo received copies of the three letters dated February 22, 2012, sent by the Johnson Clients to AT&T Missouri requesting blocking of Halo's traffic under the ERE Rules (the "Johnson Blocking Requests"), and AT&T Missouri's letter dated February 23, 2012, acknowledging receipt of the Johnson Blocking Requests and scheduling blocking to begin April 3, 2012. Later, Halo received copies of nine letters dated March 9, 2012, from the England Clients to AT&T Missouri also requesting blocking of Halo's traffic under the ERE Rules (the "England Blocking Requests") and AT&T Missouri's letter dated March 13, 2012, acknowledging receipt of the England Blocking Requests and scheduling blocking to begin April 12, 2012. The Johnson Blocking Requests and the England Blocking Requests are collectively referred to herein as the "Blocking Requests." The Johnson Clients and the England Clients are collectively referred to herein as the "Missouri LECs."

The Abeyance Order did not authorize any blocking of traffic. We respectfully disagree with the MOPSC's assertion that it is "procedurally premature" for Halo to point out that it is a CMRS provider and therefore not a "telecommunications company" and not an "originating carrier" under the ERE Rules. Under the MOPSC's logic, the ERE Rules would apply to any and all traffic of any kind and to all carriers in the country until proven otherwise, and would permit AT&T to block interstate traffic in direct violation of law unless the victim of the threatened blocking undertakes the burden and expense of initiating a case at the MOPSC under 4 CSE 240-29.120(5). You are on notice that significant portions of Halo's traffic are jurisdictionally interstate, IP-originated, or both, and therefore any wholesale blocking would be unlawful even if the ERE Rules applied (which they do not). The Johnson Clients and England Clients are the entities seeking relief, and the ERE Rules cannot lawfully or reasonably shift the burden of proving the rules do not apply and/or blocking should not occur to Halo.

The Blocking Requests rely on 4 CSR 240-29.130(2), which provides:

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

While the Missouri LECs may be a "terminating carrier" under the rules, Halo is not an "originating carrier" as the rules define that phrase. 4 CSR 240-29.020(29) defines an "originating carrier" as:

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

The Blocking Requests sent by the Johnson Clients rely heavily on the FCC's November 18, 2011, order (the "FCC Order") for the proposition that the traffic sent by Halo does not "originate" in the MTA. Paragraph 1006 of the FCC Order—one of the two paragraphs specifically relied upon by the Johnson Clients—held that Halo is providing "transit." If the FCC Order applies and is correct, Halo clearly is not an "Originating Carrier" and the Missouri ERE rules do not apply. We also note that the FCC defined "transit" traffic as "non-access" traffic, which means that under the FCC Order the traffic is not "intraMTA" but it is also "non-access." The Missouri LECs cannot claim an entitlement to payment of any amount by Halo for the traffic in issue.<sup>1</sup>

Setting aside the FCC Order, Halo is not a "telecommunications company" under the state statute and thus it cannot be an "originating carrier" under the ERE Rules. 4 CSR 240-29.020(34) has a specific definition of "telecommunications company": "those companies as set forth by section 386.020(51),<sup>2</sup> RSMo Supp. 2004." Under the cited Missouri statutory provision:

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

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

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

<sup>1</sup> Halo asserts that the FCC Order is incorrect. Halo's appeal of the FCC Order is pending before the Tenth Circuit. Nonetheless, the FCC's Order and the associated prospective rule changes are presently in effect.

<sup>2</sup> The rule cites to subsection (51) but the correct reference is obviously subsection (52).  
1116574

Leo J. Bub  
Craig S. Johnson  
W. R. England, III  
March 15, 2012  
Page 4

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

Halo is providing its services pursuant to an FCC CMRS license (Radio Station Authorization). Therefore, under the plain terms of the ERE rules Halo is not a Telecommunications company and therefore is not an "Originating carrier." The ERE Rules simply do not apply to this traffic.

The Blocking Requests have failed to identify any factual or legal basis under which the ERE Rules could apply to Halo or its traffic. Any action taken by AT&T Missouri or the Missouri LECs to block Halo's traffic would therefore be a direct violation of law without justification or excuse.

We will remind you that much of the traffic in issue is jurisdictionally interstate. Even if the ERE Rules did apply (which they do not) they could only apply to jurisdictionally intrastate traffic. The Missouri PSC completely lacks any jurisdiction or power to authorize, order or approve blocking of interstate traffic. The FCC Order mentioned the ERE Rules in ¶ 734 and note 1277 with disfavor, even though the FCC was under the impression that the ERE Rules only "allow for blocking of intrastate traffic in certain circumstances." Any blocking of interstate traffic will violate § 201 of the Communications Act.

The England Clients assert that Halo is not delivering "correct originating caller identification." This is flatly untrue and AT&T fully knows this is the case. If and to the extent that the England Clients are receiving incorrect originating caller identification it is because AT&T is changing the information it receives from Halo. Each and every one of the Missouri LECs is on notice that if and to the extent any blocking occurs based on that false allegation, Halo reserves all rights to seek appropriate relief for this flagrant and knowing misrepresentation of facts.

Halo hereby demands that the Missouri LECs either articulate a basis for application of the ERE Rules or withdraw their Blocking Requests by March 30, 2012. Halo further demands that AT&T Missouri withdraw its threat of blocking under the ERE Rules by March 30, 2012. In the event any blocking occurs, Halo reserves all rights and remedies available under applicable law, including, but not limited to, remedies for violations of § 201 of the Communications Act. We look forward to your prompt response.

Leo J. Bub  
Craig S. Johnson  
W. R. England, III  
March 15, 2012  
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Sincerely yours,

McGUIRE, CRADDOCK & STROTHER, P.C.

By: 

Steven H. Thomas

SHT/vwk

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Steven C. Reed, Secretary  
The Honorable Harold Stearley, Deputy Chief Regulatory Law Judge  
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