

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

Halo Wireless, Inc.)	
)	
Complainant,)	
)	Case No. TC-2012-0331
v.)	
)	
CRAW-KAN TELEPHONE)	
COOPERATIVE, INC., et al.,)	
)	
Respondents.)	

**MOTION FOR EXPEDITED RESOLUTION
OF HALO'S FORMAL COMPLAINT AND FIRST AMENDED FORMAL
COMPLAINT**

Pursuant to 4 CSR 240-2.080 (14) and 4 CSR 240.120(5) and .130(9), Complainant Halo Wireless, Inc. repeats and re-alleges its request for expedited resolution of its Formal Complaint and its First Amended Formal Complaint. In support of this motion Halo states as follows:

1. Halo asks that the Commission grant expedited resolution of Halo's Formal Complaint and First Amended Formal Complaint and immediately enter an Order acknowledging that no party may take action to block Halo's traffic until permitted by a further Order of the Commission, and that the Commission proceed with a final resolution of this matter as expeditiously as may be permitted under the circumstances.

2. This matter arose as a result of requests by the Non-AT&T Respondents (as defined in the First Amended Formal Complaint) that Respondent AT&T Missouri commence blocking of Halo's traffic.

3. The Non-AT&T Respondents sent requests to AT&T Missouri for blocking of Halo's traffic under Missouri's Enhanced Record Exchange ("ERE") Rules, and AT&T Missouri provided notice of such requests on February 23, March 13, and March 26, 2012, respectively.

In such notices, AT&T Missouri stated that it intends to comply with these requests and begin blocking Halo traffic to the Non-AT&T Respondents on April 3, April 12, and April 24, 2012, respectively. Moreover, on March 19, 2012, AT&T Missouri sent Halo its own notice of intent to block Halo traffic under a different provision of the ERE Rules, with blocking to begin on April 25, 2012. In all cases, AT&T notified Halo that blocking would begin automatically unless Halo filed a formal complaint with this Commission. On February 23, 2012 and again on March 13, 2012, AT&T Missouri gave notice to Halo that it intended to commence blocking Halo's traffic on April 3, 2012 and April 12, 2012, respectively.

4. On March 15, 2012, in an effort to resolve the dispute, Halo responded to the Respondents explaining that the proposed blocking was unauthorized by state and federal telecommunications law. Halo requested that the Respondents respond to its letter no later than March 30, 2012. A copy of this letter is attached as Exhibit A.

5. Neither the Non-AT&T Respondents nor AT&T Missouri provided the courtesy of any response to Halo's March 15, 2012 letter.

6. Accordingly, on April 2, 2012, Halo filed its Formal Complaint in this matter. That request included a request for expedited treatment as required by 4 CSR 240.29.130(9).

7. On April 3, 2012, AT&T Missouri gave notice that in light of Halo's Formal Complaint it would temporarily refrain from blocking Halo's traffic.

8. In its Order of April 3, 2012, the Commission acknowledged that Halo was seeking expedited treatment of its Formal Complaint: "Halo requests the Commission to grant expedited consideration of its complaint pursuant to Commission Rules 4 CSR 240.120(5) and .130(9)." The Commission granted the request and ordered an expedited schedule.

9. Halo moved expeditiously in filing its Formal Complaint when it became clear that neither the Non-AT&T Respondents nor AT&T Missouri were willing to enter into negotiations, or even a principled dialogue regarding the blocking notice as requested by Halo's March 15, 2012. Halo filed its Formal Complaint on the next business day after the time for discussions expired on March 30, 2012. At no time prior did either the Non-AT&T Respondents or AT&T Missouri notify Halo of their intention not to negotiate.

10. Expedited treatment of a Formal Complaint under 4 CSR 240.120(5) and .130(9) is necessary and in the public interest because the threat to block Halo's traffic necessarily presents the risk to the convenience, rights and safety of Halo's customers and to the general public to whom Halo's customers wish to communicate. AT&T Missouri's threat to unilaterally block Halo's traffic (at the insistence of the Non-AT&T Respondents) would result in calls addressed to Missouri end users not completing; these are calls involving peoples' personal lives and the conduct of their business. Moreover, AT&T Missouri's threat to block Halo traffic, whether acted upon or not, materially diminishes Halo's ability to compete in the telecommunications market and deprives the general public of the healthy competition which is the cornerstone of state and federal telecommunications policy.

11. Although it is clear that the Formal Complaint explicitly requested expedited treatment, that it was understood by the parties and the Commission to explicitly request expedited treatment, and that Commission granted expedited treatment, this motion is filed to alleviate any concerns regarding the adequacy of the Amended Formal Complaint. As in any other proceeding, leave to amend a pleading is authorized and required where such amendment is consistent with the goal of providing substantive justice and a full and fair hearing to all of the parties.

WHEREFORE, on the basis of the foregoing, and for the reasons stated in Halo's Formal Complaint and First Amended Formal Complaint, Halo Wireless Inc. asks that the Commission grant expedited resolution of Halo's Formal Complaint and First Amended Formal Complaint and immediately enter an Order acknowledging that no party may take action to block Halo's traffic until permitted by a further Order of the Commission.

Respectfully submitted this 9th day of April, 2012.

Respectfully submitted,



DANIEL R. YOUNG

Missouri State Bar No. 34742

LOUIS A. HUBER, III

Missouri State Bar No. 28447

SCHLEE, HUBER, McMULLEN & KRAUSE, P.C.

4050 Pennsylvania, Suite 300

P.O. Box 32430

Kansas City, MO 64171-5430

Telephone: (816) 931-3500

Facsimile: (816) 931-3553

STEVEN H. THOMAS

(petition for leave to appear and participate forthcoming)

Texas State Bar No. 19868890

TROY P. MAJOUÉ

(petition for leave to appear and participate forthcoming)

Texas State Bar No. 24067738

JENNIFER M. LARSON

Texas State Bar No. 24071167

(petition for leave to appear and participate forthcoming)

MCGUIRE, CRADDOCK & STROTHER, P.C.

2501 N. Harwood, Suite 1800

Dallas, TX 75201

Telephone: (214) 954-6800

Facsimile: (214) 954-6850

W. SCOTT MCCOLLOUGH

(petition for leave to appear and participate
forthcoming)

Texas State Bar No. 13434100

MCCOLLOUGH|HENRY, P.C.

1250 S. Capital of Texas Hwy, Bldg 2-235

West Lake Hills, TX 78746

Telephone: (512) 888-1112

Facsimile: (512) 692-2522

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been filed with the Missouri Public Service Commission electronic filing system and has been e-mailed to the following counsel of record this 9th day of April, 2012:

Craig S. Johnson
Johnson & Sporleder, LLP
304 E. High Street, Suite 200
P.O. Box 1670
Jefferson City, MO 65102
cj@cjlaw.com

Leo J. Bub
General Attorney
AT&T Missouri
One AT&T Center, Room 3518
St. Louis, MO 63101
leo.bub@att.com

Office of the Public Counsel
Lewis Mills
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov


AT&T Missouri
Jeffrey E Lewis
One AT&T Center, Room 3520
St. Louis, MO 63101
jeffrey.e.lewis@att.com

AT&T Missouri
Robert Gryzmala
909 Chestnut Street
St. Louis, MO 63101
robert.gryzmala@att.com

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov

Brian McCartney
William R. England III
Brydon, Swearengen & England
312 E. Capital Avenue
P.O. Box 456
Jefferson City, MO 65102
bmccartnery@brydonlaw.com
trip@brydonlaw.com

Missouri Public Service
Commission
Cully Dale
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
cully.dale@psc.mo.gov


DANIEL R. YOUNG

McGUIRE, CRADDOCK & STROTHER, P.C.

2501 N. HARWOOD
SUITE 1800
DALLAS, TEXAS 75201
www.mcslaw.com

STEVEN H. THOMAS
DIRECT: 214.954.6845
stthomas@mcslaw.com
Licensed in New York and Texas

TELEPHONE: 214.954.6800
TELECOPIER: 214.954.6868

March 15, 2012

Leo J. Bub
General Attorney
AT&T MISSOURI
One AT&T Center, Room 3518
St. Louis, Missouri 63101

CM-RRR No: 71969008911147526349
Via Email: leo.bub@att.com
Via FAX: 314.247.0014

Craig S. Johnson
JOHNSON & SPROLEDER, LLP
304 E. High St., Suite 200
P.O. Box 1670
Jefferson City, Missouri 65102

CM-RRR No. 71969008911147526356
Via Email: cj@cjslaw.com
Via FAX: 573.761.3587

W. R. England, III
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102-0456

CM-RRR No. 71969008911147526400
Via Email: 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").

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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.¹

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),² 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:

¹ 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.

² The rule cites to subsection (51) but the correct reference is obviously subsection (52).
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(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.

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Sincerely yours,

McGUIRE, CRADDOCK & STROTHER, P.C.

By: 

Steven H. Thomas

SHT/vwk

cc: John Van Eschen, Manager—Telecommunications Department
Steven C. Reed, Secretary
The Honorable Harold Stearley, Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, PO Box 360
Jefferson City, MO 65102-0360
Email: john.vaneschen@psc.mo.gov
Email: steven.reed@psc.mo.gov
Email: harold.stearley@psc.mo.gov