

**THE OFFICE OF REGULATORY STAFF**

**DIRECT TESTIMONY**

**OF**

**CHRISTOPHER J. ROZYCKI**

**March 9, 2012**



**2011-304-C**

**COMPLAINT AND PETITION FOR RELIEF OF  
BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A  
AT&T SOUTHEAST D/B/A AT&T SOUTH CAROLINA V.  
HALO WIRELESS, INCORPORATED FOR BREACH OF  
THE PARTIES' INTERCONNECTION AGREEMENT**

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CHRISTOPHER J. ROZYCKI  
FOR  
THE OFFICE OF REGULATORY STAFF  
DOCKET NO. 2011-304-C**

**IN RE: COMPLAINT AND PETITION FOR RELIEF OF BELL SOUTH  
TELECOMMUNICATIONS, LLC D/B/A AT&T SOUTHEAST D/B/A AT&T SOUTH  
CAROLINA V. HALO WIRELESS, INCORPORATED FOR BREACH OF THE  
PARTIES' INTERCONNECTION AGREEMENT**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

A. My name is Christopher J. Rozycki and my business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina Office of Regulatory Staff ("ORS") as a Program Manager in the Telecommunications Department.

**Q. PLEASE DESCRIBE YOUR BUSINESS EXPERIENCE AND BACKGROUND.**

A. I have over thirty (30) years of experience. I have more than twenty (20) years in telecommunications business and regulation and nearly ten (10) years in the regulation of energy industries.

In the telecommunications industry I worked for a major interexchange company, AT&T (before it remerged with Southwestern Bell Telephone Company ("SBC") and BellSouth Telecommunications, Inc.), two competitive local exchange companies, a competitive broadband/cable TV company, and a telecommunications consulting firm.

1 As my experience grew, I took on roles of increasing responsibility and leadership, often  
2 crafting the regulatory policy for my company and presenting that position in meetings,  
3 presentations, formal comments, and testimony.

4 My testimony and advocacy covered issues involving finance, economics, rate-of-  
5 return, competitive entry, inter-carrier compensation and access. I have also been  
6 involved with the startup, development, and funding of telecommunications companies  
7 and other businesses.

8 Additionally, I have worked for the federal government in an energy regulatory  
9 organization (U.S. Department of Energy), and as a public utility consumer advocate for  
10 a county government in Virginia.

11 I hold a master's degree in Economics from George Mason University in Fairfax,  
12 Virginia and a bachelor's degree in Economics from Georgetown University in  
13 Washington, DC.

14 **Q. WHAT ARE YOUR RESPONSIBILITIES AT THE OFFICE OF REGULATORY**  
15 **STAFF?**

16 **A.** As Telecommunications Program Manager, I am responsible for all  
17 telecommunications activities of ORS including the certification of new  
18 telecommunications entrants, regulation and oversight of existing telecommunications  
19 companies, management of the state universal service and Interim LEC funds, and  
20 administration of the Lifeline Program.

1 **Q. HAVE YOU PROVIDED TESTIMONY IN OTHER REGULATORY**  
2 **PROCEEDINGS?**

3 A. Yes. I have provided testimony on a variety of issues in Alabama, Delaware,  
4 Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, Pennsylvania, South  
5 Carolina, Tennessee, Vermont, and Virginia.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

7 A. The purpose of my testimony is to provide the Commission with ORS' position  
8 regarding the telecommunications services being offered by Halo Wireless, Incorporated  
9 ("Halo") in South Carolina and our review of the interconnection agreement ("ICA")  
10 between Halo and Bellsouth Telecommunications, LLC d/b/a AT&T South Carolina  
11 ("AT&T"). More specifically, whether telecommunications traffic (telephone calls)  
12 delivered by Halo to AT&T for termination to South Carolina residents or businesses are  
13 wireless calls or are these telephone calls classified as wireline calls.

14 **Q. CAN YOU SUMMARIZE AT&T'S POSITION IN THIS CASE?**

15 A. Yes. Simply stated, AT&T alleges that Halo is delivering wireline originated  
16 interstate and intrastate, interLATA calls to AT&T and refusing to pay terminating access  
17 for these calls. Halo has a wireless ICA with AT&T. AT&T, however, claims that much  
18 of Halo's traffic originates on traditional wireline phones, and that Halo is using an  
19 access charge avoidance scheme to make these wireline calls appear to be wireless and  
20 intraMTA.

1 More specifically, AT&T has identified four specific complaints against Halo in  
2 its Complaint and Petition.

3 Count I – Breach of ICA: Sending wireline-originated traffic to AT&T South  
4 Carolina.

5 Count II – Breach of ICA: Alteration or deletion of call detail.

6 Count III – Payment for termination of wireline-originated traffic.

7 Count IV – Breach of ICA: Non-Payment for facilities.

8 **Q. CAN YOU SUMMARIZE HALO’S POSITION IN THIS CASE?**

9 A. Yes. Halo states it is a wireless carrier; it receives wireless traffic from Transcom;  
10 and it delivers wireless traffic to AT&T in accordance with its ICA.

11 **Q. IS HALO A WIRELESS CARRIER?**

12 A. Halo does have a wireless license for the Orangeburg, SC area, issued by the  
13 Federal Communications Commission (“FCC”).

14 **Q. DOES THE FACT THAT HALO HAS A WIRELESS LICENSE INDICATE**  
15 **THAT ALL TRAFFIC IT HANDLES MUST BE DEFINED AS WIRELESS?**

16 A. No, it does not. Other telecommunications companies operating in South  
17 Carolina carry both wireless and wireline traffic in the state. Sprint, for example,  
18 provides wireless service in South Carolina, while also operating as an interexchange  
19 carrier (“IXC”) and providing wholesale telecommunications service to other carriers.

1 **Q. IN HALO'S PARTIAL MOTION TO DISMISS, THE COMPANY CLAIMS THE**  
2 **COMMISSION LACKS THE JURISDICTION TO "DECIDE WHETHER HALO**  
3 **IS ACTING WITHIN AND CONSISTENT WITH ITS FEDERAL LICENSE." IS**  
4 **HALO CORRECT?**

5 A. No. Pursuant to S.C. Code Ann. § 58-11-100 (D) the Commission retains  
6 jurisdiction to address and resolve issues relating to arrangements and compensation  
7 between telecommunications carriers and commercial mobile service providers, pursuant  
8 to 47 U.S.C. Sections 251 and 252.

9 Furthermore, the Commission has jurisdiction over intrastate telecommunications  
10 traffic, and the authority to regulate those companies offering retail or wholesale  
11 intrastate wireline telecommunications services. While not an issue raised in AT&T's  
12 complaint, it is ORS's position that Halo appears to be providing wholesale intrastate  
13 wireline telecommunications services in South Carolina without a certificate of public  
14 convenience and necessity ("CPCN").

15 **Q. IS TRANSCOM AN END USER?**

16 A. No, not in the opinion of ORS. For traffic originated by end users and delivered  
17 to Transcom by another carrier for delivery to a third carrier, or even an end user,  
18 Transcom cannot be classified as an originating or terminating end user.

19 **Q. YOU USE SPRINT AS AN EXAMPLE OF A WIRELESS CARRIER WHICH**  
20 **OPERATES AS AN IXC AND WHOLESALE CARRIER. WHAT THREE TYPES**  
21 **OF SERVICES DOES SPRINT PROVIDE IN SOUTH CAROLINA? WHAT**

**APPROVALS OR LICENSES IS SPRINT REQUIRED TO HAVE FOR THOSE  
SERVICES IN SOUTH CAROLINA?**

A. The first service Sprint offers is wireless service. Companies providing wireless service obtain a license from the FCC for a specified geographic area. Most wireless traffic is generated by end-user customers of the wireless license holder with mobile wireless devices (e.g. cell phones or tablets). The key here is that the traffic is end-user generated, and the end-user is a customer of the wireless company.

The second service Sprint offers is wireline IXC service. This is traditional wireline-based long distance service. Companies providing this service in South Carolina are required to obtain a CPCN from the Commission. Traffic here is again generated by end-users who are the customers of the IXC.

The third service Sprint offers is wholesale telecommunications service. This service is provided by one carrier to another carrier or multiple carriers. The wholesale carrier has no contract or direct relationship with the end-user. Wholesale telecommunications carriers are required to obtain a CPCN to operate in South Carolina.

**Q. IS HALO OPERATING SOLELY AS A WIRELESS SERVICE PROVIDER IN  
SOUTH CAROLINA?**

A. No. According to the information filed in this proceeding, Halo has an FCC license to operate in South Carolina as a wireless carrier, but it does not appear to ORS that Halo is providing end-users with wireless service that the end-user accesses through

1 a mobile wireless device, and nearly all of its South Carolina traffic is wholesale  
2 (provided to another carrier).

3 **Q. IF HALO IS NOT OPERATING AS A WIRELESS SERVICE PROVIDER, HOW**  
4 **DOES ORS CLASSIFY THE SERVICE HALO IS PROVIDING?**

5 A. Halo apparently has one customer in South Carolina - Transcom. Halo has  
6 informed ORS that it has no retail customers in South Carolina. Transcom appears to  
7 aggregate wireline traffic from other carriers and delivers it to Halo over a wireless  
8 connection. As I stated earlier, in this scenario, Halo appears to be a wholesale carrier or  
9 a carrier's carrier operating without the necessary CPCN to sell wholesale intrastate  
10 telecommunications services.

11 **Q. ACCORDING TO HALO, TRAFFIC IS RECEIVED FROM ITS CUSTOMERS**  
12 **VIA A WIRELESS CONNECTION. BECAUSE HALO HAS A WIRELESS**  
13 **LICENSE DOES THAT CLASSIFY HALO AS A WIRELESS CARRIER?**

14 A. No. Much of the traffic Halo transports originated as wireline telephone calls.  
15 AT&T and Halo dispute the amount of traffic that originated as wireline telephone calls.  
16 Halo then transports these calls to AT&T for termination to wireline customers of AT&T  
17 and other South Carolina ILECs. Calls that originate on a wireline phone and terminate  
18 on a wireline phone in South Carolina are intrastate wireline calls.

19 As for Halo's claim that it is a wireless carrier, based on the information I have  
20 reviewed, Halo and Transcom have constructed a wireless facility for the exchange of  
21 traffic.



1 Finally, the FCC in its recent Order (FCC 11-161) states in paragraph 1006:

2 We clarify that a call is considered to be originated by a CMRS provider  
3 for purposes of the intraMTA rule **only if the calling party initiating the**  
4 **call has done so through a CMRS provider**. Where a provider is merely  
5 providing a transiting service, it is well established that a transiting carrier  
6 is not considered the originating carrier for purposes of the reciprocal  
7 compensation rules. Thus, we agree with NECA that the “re-origination”  
8 of a call over a wireless link in the middle of the call path does not convert  
9 a wireline-originated call into a CMRS-originated call for purposes of  
10 reciprocal compensation and we disagree with HALO’s contrary position.  
11 (Emphasis Added)

12 Thus, a call that originates on a wireline and terminates on a wireline is a wireline  
13 call for purposes of inter-carrier compensation. For example, a call originating on a  
14 wireline phone in North Carolina and terminating on an AT&T wireline phone in South  
15 Carolina, is an interstate call, subject to interstate access charges, regardless of the means  
16 of transport. A call originating on a wireline phone in Charleston, SC and terminating on  
17 an AT&T wireline phone in Greenville, SC, is an intrastate interLATA call, subject to  
18 intrastate access charges, regardless of the means of transport. A call originating on a  
19 wireline phone in Charleston, SC and terminating on an AT&T wireline phone in  
20 Charleston, SC, is a local call, subject to reciprocal compensation charges, regardless of  
21 the means of transport. The FCC has reviewed other requests for exemption of access  
22 charges where the means of transporting the call was altered but did not change the  
23 fundamental nature of the call. See, *In the Matter of Petition for Declaratory Ruling that*  
24 *AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC  
25 Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) (“AT&T  
26 Declaratory Ruling” or “IP-in-the-Middle”). Importantly, the FCC held that there is “no

benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules, particularly where, based on the record before us, end users have received no benefit in terms of additional functionality or reduced prices." *Id.* at. ¶ 17 ORS agrees with the FCC's position on this issue and sees no benefit to end users in the construction of the call flow at issue in this proceeding.

**Q. IN PARAGRAPHS 14 AND 15 OF HALO'S PARTIAL MOTION TO DISMISS, THE COMPANY COMPARES TELEPHONE TRAFFIC AT ISSUE IN THIS CASE TO INTERNET TRAFFIC. IS THIS A PROPER COMPARISON?**

A. No, it is not. The ISP traffic being referred to by Halo in 2000 was dial-up data/IP traffic being directed to the Internet that could be sent to multiple locations all over the world simultaneously. Many of Transcom's so-called wireless/ESP transmissions first originated as traditional telephone calls and were directed to one and only one terminating telephone number. When the receiving party answered, one individual spoke with another individual, a voice communication occurred. As the FCC has stated in its recent Order (FCC 11-161, paragraph 1006), "the '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." It is very clear that the FCC does not consider the Transcom to Halo transmission to be a re-origination of the call, therefore, the wireline-originated call and all of its IXC and network transiting components are

jurisdictionally identified by the true originating and terminating points of the telephone call.

**Q. ARE THERE ANY BENEFITS TO THE ROUTING OF THIS TRAFFIC THROUGH TRANSCOM AND HALO?**

A. I can think of one – avoidance of the higher priced switched access charges. It is significant that Halo inserted a Charge Number (“CN”) on calls it sent AT&T in a given MTA thereby ensuring that every call appeared to be wireless and intraMTA (Direct Testimony of Neinast at p. 34, lines 3-8).

**Q. HAS HALO BREACHED ITS INTERCONNECTION AGREEMENT WITH AT&T, BY SENDING WIRELINE-ORIGINATED TRAFFIC TO AT&T?**

A. Yes. It appears the AT&T and Halo ICA is specific to wireless traffic only, and a significant amount of Halo’s traffic appears to be wireline-originated.

**Q. WHAT ARE YOUR RECOMMENDATIONS IN THIS CASE?**

A. ORS recommends the Commission do the following:

1. Authorize AT&T South Carolina to stop accepting traffic from Halo Wireless, Inc.
2. Require Halo, within ten (10) days, to identify all affiliated companies operating in South Carolina, and for Halo and each of these affiliated companies to identify the following:
  - a. Whether the affiliate is offering local, long distance, or wholesale telecommunications service in the state;

1           b. In which areas or communities Halo or the affiliate is providing  
2           telecommunications service; and

3           c. The number of residential, business, and carrier customers Halo and each affiliate  
4           is serving.

5   **Q.     DOES THIS CONCLUDE YOUR TESTIMONY?**

6   **A.           Yes it does.**