

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Alma Communications Company D/B/A Alma Telephone Company, et al.,	§	
	§	
Complainants	§	Case No. IC-2011-0385
v.	§	
Halo Wireless, Inc.	§	
	§	
Respondent	§	
Alma Communications Company D/B/A Alma Telephone Company, et al.,	§	
	§	
Complainants	§	Case No. TC-2011-0404
v.	§	
Halo Wireless, Inc.	§	
	§	
Respondent	§	

**HALO WIRELESS, INC.’S REPLY TO RESPONSES
TO SHOW CAUSE ORDER AND MOTION TO ABATE**

NOW COMES Halo, Wireless, Inc., (“Halo”), respondent in each of the above captioned dockets (the “Inactive Proceedings”), and files this reply to the Responses to Show Cause Order and Motion to Abate filed by the complainants (“Complainants”) in the Inactive Proceedings as follows:

1. The Commission has aptly noted that the Complainants have failed to take any action in the Inactive Proceedings and rightfully issued an order (the “Show Cause Order”) requiring the Complainants to provide some justification for keeping the Inactive Proceedings open in light of Complainants’ failure to take any step in these proceedings since the proceedings were remanded from federal court four months ago.

2. However, Complainants' Responses to the Show Cause Order provide no actual authority or legitimate justification for their position that the Inactive Proceedings should remain open despite Complainants' failure to prosecute their claims. Instead, Complainants' devote the vast majority¹ of their Responses merely regurgitating the same procedural history and meritless allegations of fraud that form the basis of the multiple proceedings Complainants and other have initiated against Halo.

3. Indeed, the Inactive Proceedings are two of many actions taken or filed across the country by Complainants and over a hundred other similarly situated parties in the industry against Halo for the express purposes of contesting, and ultimately destroying, Halo's business and recovering access charges alleged to be due. Halo has consistently maintained that the various state commissions where Complainants and other similarly situated parties filed the vast majority of the initial complaints against Halo lack jurisdiction to adjudicate and make determinations on the regulatory classification of Halo and its high volume customer, Transcom Enhanced Services, Inc. ("Transcom") and their respective traffic.

¹ Notably, the Complainants have also attempted to assert that the issues in dispute between Halo and the Complainants have already been decided by other commissions and by the FCC in the FCC's recent Connect America Order (the "FCC Order"). The Complainants cite the FCC Order for the proposition that Halo's traffic must be access traffic because the FCC held that Halo's is not intraMTA. Halo obviously disagrees, and has appealed the decision along with a number of other parties who disagree with portions of the FCC Order. Nonetheless, contrary to the Complaining Parties' insinuations, the FCC never said that Halo's service was not "wireless" or "CMRS." The FCC only asserted that it was not intraMTA for reciprocal compensation purposes. Moreover, the FCC went a step further and held that traffic like Halo's is "transit" and "non-access." This distinction is significant because a transit carrier owes no obligation to a terminating carrier for terminating the traffic. Instead it is the originating carrier that owes termination. In other words, regardless of whether the traffic is intraMTA as Halo asserts or is "transit" as the FCC asserts, Halo does not owe any compensation, and certainly does not owe access compensation to Complainants for this non-access traffic.

In other words, the FCC Order does not automatically entitle Complainants' to the relief they seek. Similarly, other decisions by other commissions do not entitle Complainants' to the relief they seek, because those decisions are not binding on this Commission. Regardless, the application of the FCC Order on any other order does not justify keeping the Inactive Proceedings open when the Complainants remain involved in other open proceedings encompassing the relief they seek.

4. As a result of these threshold jurisdictional issues and the possibility of conflicting judgments that threatened to destroy Halo's ability to continue its operations, Halo filed for bankruptcy protection with the express intention of consolidating all of the proceedings against it in a single forum of proper jurisdiction that would decide the issues in the most time and cost efficient manner possible. However, Complainants and the other similarly situated parties have contested any attempts by Halo to consolidate these cases in a single forum, which could have decided all of the issues months ago. Thus, it is Complainants, and not Halo, who are responsible for the proliferation of proceedings and the waste of the parties' time and resources.

5. The Complainants' most recent strategy in their continuing campaign against Halo was to focus on sending blocking notices under the ERE rules that they allege would allow immediate blocking of Halo traffic before any commission or court of competent jurisdiction could determine the propriety of the requests. As any party under the circumstances would do, Halo has filed a response to the blocking notices to protect its rights and seek a determination on the propriety of the proposed blocking, which would obviously affect Halo's ability to continue to operate.

6. Despite Complainants' insinuations, there can be no adverse presumption against Halo for exercising its rights to contest jurisdiction, seek bankruptcy protection, or oppose blocking of its traffic. Neither do the steps taken by Halo to protect its rights justify the fact that the Complainants have taken no actions in the Inactive Proceedings since they were remanded. In fact, the Complainants only suggest that the Inactive Proceedings should be kept open just in case the various other proceedings that remain active or properly abated do not grant them the relief they seek. However, there is no

need to keep the Inactive Proceedings open when the other proceedings involving Complainants and Halo clearly involve all of the same determinations and requested relief involved in the proceedings that remain open.

WHEREFORE premises considered, Halo requests that the Inactive Proceedings be closed in accordance with the Commission's Show Cause Order.

Respectfully submitted this 16th day of April, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply to Responses to Show Cause Order and Motion to Abate* was served via electronic mail and/or regular mail on the following counsel of record and designated contact individuals on this the 16th day of April, 2012:

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