Exhibit No.:
Issues: Multiple jurisdictional, contractual, and policy related issues
Witness: Russ Wiseman
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Halo Wireless Inc.
Case Nos.: TC-2012-0331 and TO-2012-0035

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Halo Wireless, Inc.,	§	
	§	
Complainant,	§	Case No. TC-2012-0331
	§	
v.	§	
	§	
Craw-Kan Telephone Cooperative, Inc., et al.,	§	
	§	
Respondents.	§	
		consolidated with

Alma Communications Company d/b/a Alma Telephone Company, et al.	§	
	§	
	§	Case No. IC-2012-0035
Complainants,	§	
	§	
vs.	§	
Halo Wireless, Inc. and Southwestern Bell Telephone Company, d/b/a AT&T Missouri,	§	
Respondents.	§	

PRE-FILED REBUTTAL TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

June 19, 2012

AFFIDAVIT OF RUSS WISEMAN

STATE OF TEXAS §
§
COUNTY OF DALLAS §

I, Russ Wiseman, of lawful age, being duly sworn, depose and state:

1. My name is Russ Wiseman. I am the President and Chief Operating Officer for Halo Wireless, Inc.

2. Attached hereto and made a part hereof for all purposes are my Rebuttal Testimony and true and correct copies of the exhibits thereto.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

s/ *Russ Wiseman*
RUSS WISEMAN

SUBSCRIBED and SWORN TO, on this the 19 day of June, 2012.

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Halo Wireless, Inc.,	§	
	§	
Complainant,	§	Case No. TC-2012-0331
	§	
v.	§	
	§	
Craw-Kan Telephone Cooperative, Inc., et al.,	§	
	§	
Respondents.	§	
		consolidated with

Alma Communications Company d/b/a Alma Telephone Company, et al.	§	
	§	
	§	Case No. IC-2012-0035
Complainants,	§	
	§	
vs.	§	
Halo Wireless, Inc. and Southwestern Bell Telephone Company, d/b/a AT&T Missouri,	§	
Respondents.	§	

PRE-FILED REBUTTAL TESTIMONY OF RUSS WISEMAN
ON BEHALF OF HALO WIRELESS, INC.

INTRODUCTION

Q: Please state your name, title and business address.

A: My name is Russ Wiseman. I am the President and Chief Operating Officer for Halo Wireless, Inc. ("Halo"). My business address is 2351 W. Northwest Highway, Suite 1204, Dallas, TX 75220. I am responsible for all operations at Halo, including sales, marketing, network and system operations, and inter carrier relations.

Q: On whose behalf are you appearing?

A: I am appearing for Halo.

Q: Are you the same Russ Wiseman who presented Direct Testimony?

A: Yes.

Q: Are you an attorney?

A: No.

Q: On whose behalf are you appearing?

A: I am appearing for Halo.

Q: What is the purpose of this Rebuttal Testimony?

A: I will respond to the Direct Testimonies of the staff witness and the witnesses for AT&T (the "AT&T Witnesses") and the RLECs (the "RLEC Witnesses") in consolidated cases, No. TC-2012-0331 (the "Blocking Proceeding"), and No. IC-2012-0035 (the "ICA Rejection Proceeding" and collectively with the Blocking Proceeding, the "MOPSC Proceedings"). In particular, I will respond to the Direct Testimonies of William Voight for the Staff, J. Scott McPhee and Mark Neinast for AT&T (the "AT&T Witnesses"), Tommie Sue Loges for Alma Telephone Company, Amanda Molina for Choctaw Telephone Company and Mokan Dial Inc., and Debbie Choate for Miller Telephone Company (collectively the "Opposing Party Testimony"). I will also provide additional rebuttal testimony relevant to the facts in the MOPSC Proceedings to inform the Commission and assist it in ruling on the matters before it in the MOPSC Proceedings.

Q: Will you specifically "rebut" everything in the Opposing Party testimony that you take issue with?

A: No. Many of the things they say were already and sufficiently addressed in my Direct. In order to conserve time and paper I will not repeat what I've already said. My silence in this Rebuttal Testimony on a claim or argument made in the Opposing Party Testimony should not be interpreted as assent, concurrence, agreement or admission. To the contrary.

Q: To the extent you respond to specific testimony by the Opposing Parties are you agreeing the testimony is relevant and admissible?

A: No. My Rebuttal is presented in case the Commission decides to receive and consider the Opposing Party Testimony to which I respond.

Q: Have you read the Opposing Party Testimony?

A: Yes, I have read the Opposing Party Testimony and will respond to same below.

RESPONSE TO MCPHEE

Q. On Page 4 of his Direct Testimony, Mr. McPhee repeats AT&T's Claim that Halo "disguised traffic" through signaling manipulation. How do you respond?

A. I previously addressed Halo's signaling practices and Halo's compliance with industry practice regarding signaling in my direct testimony and won't repeat that entire discussion here. However, it should be reiterated that Halo has never attempted to "disguise" traffic. Halo has never manipulated or inserted CPN or done anything that prevented AT&T from determining the initial geographical starting point of a call. Halo's practice until December 2011 was to merely insert the correct CN number of its customer Transcom because Transcom was indeed the financially responsible party for the traffic sent to AT&T for termination over the interconnection trunks. Should it have desired to do so, AT&T could have generated CABS bills from AMA records. So AT&T cannot legitimately claim that Halo prevented AT&T from properly identifying and billing for Halo's traffic. In any event, Halo's ICAs with AT&T all rely on traffic factors for billing. There is no call-by-call rating anywhere. So by inserting the CN, or not inserting the CN, billing is unaffected.

Q. Why are these facts relevant?

A. AT&T's ability to generate CABS bills from AMA records from Halo's traffic contradicts the RLECs' claims that AT&T didn't know how to send them records to bill. Based on the advice of counsel, it is my understanding that this fact and the fact that any change or deletion of CPN was done by AT&T, and not Halo, is sufficient to deny blocking under Missouri's ERE rules.

Q. On page 24 of his Direct Testimony, Mr. McPhee claims that Halo is violating the ERE rule by sending landline traffic that is not meant for the LEC-to-LEC network and then not paying AT&T for it. How do you respond?

If AT&T is right and that traffic should not be on the network, it was AT&T who put the traffic there. If they were right to put it there, then there can be no ERE rule violation. If AT&T was wrong to put it there then AT&T is to blame. In no case can Halo be blamed for AT&T's decision – into which Halo had no input or control – to place any traffic on the so-called "LEC-to-LEC network."

RESPONSE TO NEINAST

Q: What is your response to the Testimony of Mr. Neinast and the other Opposing Party Witnesses on the "wireless" issue?

A: With regard to the "wireless origination" issue, the Opposing Party Witnesses each base their opinions, conclusions and ultimate positions on one express assumption and another implicit assumption. They also exhibit surprising ignorance – which seems disingenuous – about how Enhanced Service Providers ("ESPs") have always obtained their connections to the public switched telephone network ("PSTN") in order to originate and terminate communications where one, the other or both edge devices were on the PSTN.

Q: What is the express assumption?

A: They expressly focus entirely on the "telephone number" that appears in the SS7-related CPN or CN address signal as the sole basis for a series of conclusions regarding "where" a call "actually" originated, which "carrier" serves the initial calling party and whether the call is "landline" or "wireless."

Q: Is this a valid or reasonable assumption?

A: No. The Opposing Party Witnesses assert that the assumption is reasonable, but they do not recognize and accept what the telecommunications industry has already accepted, and that is that telephone numbers are no longer accurate proxies for determining a call's location, carrier networks or call types in today's world. Indeed, this has been the case for quite some time – ever since number portability, VoIP services and wireless mobility began to proliferate. The fact that there is no convenient or industry agreed solution to this problem, and some have chosen to rely on antiquated industry practices they know full well yield inaccurate results, should not validate the assumptions and conclusions the Opposing Party Witnesses reach.

Q: What is one of the key implicit assumptions?

A: The Opposing Party Witnesses necessarily assume that Halo's customer is something other than a communications intensive business end user and as such an end-point where calls originate and terminate. None of the witnesses consider the possibility that Transcom is an end user, and what the implications such a distinction would have on their characterizations and conclusions, which are entirely based on the proposition that Transcom is or must be a telecommunications carrier rather than an end user.

Q: Do the Opposing Party Witnesses ever address the fact that Transcom is an ESP and end user?

A: Yes. Not surprisingly, however, the Opposing Party Witnesses refuse to acknowledge the rulings discussed in my Direct (and attached as Exhibits 1-4 to the Direct Testimony of Robert Johnson) that refute this position. Notably, AT&T's witness, Mr. Neinast, seems to rely only on two decisions from state commissions to support his argument that Transcom does not provide enhanced services.

Based on advice from Halo's counsel, it is my understanding that the Transcom Bankruptcy Court made findings on the identical facts underlying AT&T's Complaint against Halo before this Commission. Since the Transcom Bankruptcy Court determined that Transcom provides enhanced services which are "not subject to access charges," AT&T may not seek a contrary determination in this or any other proceeding. This is not a situation where AT&T was unaware of Transcom's contentions that it provided enhanced services at the time that the Transcom Bankruptcy Case was pending. To the contrary, it is my understanding that this contention was openly litigated during the Transcom Bankruptcy Case and was ultimately a critical component of Transcom's emergence from bankruptcy.

Although the ICA between AT&T and Halo was signed after the Confirmation Order, the current action is undeniably based on the same facts as the Transcom Bankruptcy Case because the primary issue in both proceedings is whether Transcom provides enhanced services.

AT&T's Complaint filed with the Tennessee Regulatory Authority ("TRA") confronted the TRA with the identical issue that the Transcom Bankruptcy Court was confronted with over five years ago. As it's been presented to me, the issue was litigated on April 14, 2005, and again at the Confirmation Hearing. Transcom and the AT&T/SBC Creditors appeared, offered

evidence, and argued their respective positions on the ESP and end user issues. The parties also submitted post-hearing briefs supporting their positions. In deciding that Transcom does provide enhanced services and is an end user, the Transcom Bankruptcy Court took into account all of the evidence, oral argument, and briefing submitted by both Transcom and the AT&T/SBC Creditors on the issue. Because AT&T's Complaint before the TRA, and also before this Commission, raises claims and issues which were disposed of in the Plan and Confirmation Order – including a finding that Transcom provides enhanced services not subject to access charges – it is my understanding that AT&T is barred from seeking the payment of access charges from Halo under several legal theories, the briefing of which I will leave to Halo's counsel.

Halo counsel and I believe the TRA's decision to discount prior rulings, to which AT&T was a party, on a critical issue in the proceeding involving Halo and AT&T before the TRA is seriously flawed, and it has been appealed. Setting aside any legal theories under which AT&T might be barred from seeking another determination on this issue, we believe the TRA lacked sufficient evidence to re-decide the ESP issue. For example, in ruling that Transcom does not provide enhanced services, which we and four prior court rulings disagree with, the TRA cited only testimony from AT&T's witness, who merely proffered non expert opinions with no legal foundations. In fact, in cross examination in other Public Utility Commission proceedings, when these same witnesses have been asked what Transcom is, they are on the record as saying they don't know what Transcom is. This contradictory testimony suggests to me that their testimony on this issue is shallow at best, and meant to deflect a very salient fact that would otherwise undermine their entire case.

In his Direct Testimony, Mr. Neinast cites a ruling of the Pennsylvania Public Utility Commission involving Transcom and an entity unrelated to Halo, Transcom, or AT&T, Global NAPS South, Inc. AT&T's consideration of this decision raises the question – why would AT&T pick and choose which prior rulings it would ask the Commission to consider on the ESP issue and fail to give weight to several rulings involving AT&T itself? The only logical conclusion I can reach is that AT&T simply did not like the conclusion reached in the prior rulings in the Transcom Bankruptcy Court, and therefore, AT&T is choosing to ignore them.

They do so, as I state above, because they know consideration of the prior rulings would turn their conclusions upside down. Ultimately, the Opposing Party Witnesses fixate entirely on what happens before Transcom receives a call for processing. They skip over the fact that the Transcom Bankruptcy Court ruled (over AT&T's objection) that Transcom changes the content and adds enhancement before Transcom then uses telephone exchange service (such as the telephone exchange service it purchases from Halo) to originate (or re-originate) the call in the MTA using its wireless CPE.

Our position throughout these proceedings, supported by relevant judicial decisions, is that Transcom is buying "end user" telecommunications service (in the form of a wireless "business line") from Halo so that Transcom can originate and terminate calls. Transcom uses this telecommunications just like many other businesses, including ESPs, do: as one of several other production inputs to its own product output. This is not a radical or new theory; the enhanced/information service precedent has long recognized that adding enhanced/information functions on top of the telecommunications "contaminates" the telecommunications, with the result that the ESP's finished service is "enhanced/information" rather than a telecommunications service. This is how ESPs have always operated.

Based on this historical doctrine, the Opposing Parties' challenge of Transcom's ESP status is backwards. They should be explaining why Transcom's service continues to be fundamentally "telecommunications" in nature, and the extent to which the telecommunications are not integrated with and subsumed within the higher-layer generation, acquisition, transformation, processing, retrieval, utilization and/or making available of Transcom's customer-supplied information.[1] The Opposing Parties' claim that the "change of content" functions – which they frankly admit are occurring or the capability exists – should be disregarded because they only "improve call quality" and are thus merely "incidental" or "adjunct" to the telecommunications component. They seem to be espousing what I have come to understand is the "adjunct to basic" rule, which applies to services that are "incidental" to an underlying telecommunications service and do not "alter[] their fundamental character" even if they may meet the literal definition of an information service or enhanced service.[2] What the

[1] *See Second Computer Inquiry* ¶ 120 ("… The Commission therefore determined that enhanced services, which are offered "*over* common carrier transmission facilities," were themselves not to be regulated under Title II of the Act, *no matter how extensive their communications components*. The Commission reaffirmed its definition of enhanced services in the *Computer III* proceeding.") (Emphasis added.); Notice of Proposed Rulemaking, *In the Matters of: Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry) and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, FCC 85-397, ¶ 46, and note 34, 1985 FCC LEXIS 2770 (rel. Aug 1985) (*Computer III Notice*) ("n34 **These disparate policies [i.e., a "contamination" one for entities lacking market power and a non-"contamination" one for dominant carriers** such as AT&T and the BOCs] have made sense as a policy matter, but since we have not articulated a basis for treating the two groups differently some confusion may have been created. Deregulation of entities that do not have underlying facilities and that obtain transmission capacity from others pursuant to their tariffs is sensible; no policy goal is served by regulating any aspect of these entities' offerings. Conversely, the offerings of dominant carriers are often monopoly or near-monopoly ones. Such offerings are needed and used by competitors and can be manipulated anticompetitively.").(emphasis added)

[2] *See, e.g.,* Order and NPRM, *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, ¶ 16, 20 FCC Rcd 4826, 4831 (rel. Feb. 2005) (*Calling Card Order)*; Memorandum Opinion and Order, *North American Telecommunications Association Petition for Declaratory Ruling Under § 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, ENF 84-2, 101 FCC 2d 349, 359-361, ¶¶ 24-28 (1985) (*NATA Order*) (services that "facilitate the provision of basic services without altering their fundamental character" are not considered enhanced services), *recon.*, 3 FCC Rcd 4385, 4386, paras. 8-9 (1988) (*NATA Reconsideration Order*); Memorandum Opinion and Order, *Beehive Telephone v. The Bell Operating Companies*, File No. E-94-57, 10 FCC Rcd 10562, 10566, ¶ 21 (1995) ("services that are incidental or adjunct to the common carrier transmission service are to be regulated in the same way as the common

ILECs consistently forget, or would like the state commissions to ignore, is that the adjunct to basic rule cannot apply when (as here), Transcom does not provide *any* telecommunications service. The adjunct to basic rule only applies to carriers that have a basic telecommunications service and *also* offer a feature that has some "enhanced/information qualities" as well. In other words, there must first be a "basic" telecommunications service. Otherwise there is nothing the "enhanced functions" can be "adjunct" to.[3] Since Transcom does not have or offer a common carrier basic telecommunications service offering, there is *nothing to which the higher layer enhanced functions can be "adjunct" to and therefore the "adjunct to basic" rule simply cannot apply*. This is simple logic. Given that Transom is not a common carrier and does not provide any telecommunications service, the question is not whether any of its discrete services or functions are "sufficiently integrated" to "transmute" or "convert" a basic telecommunications service into an enhanced/information service. There is no telecommunications service to "convert."

What Transcom has told me, and what I understand to be true, is that they do not own any of their own transmission facilities. Instead, they obtain leased transmission capability from third party providers in order to interconnect their distributed elements together. to which they add their own functionalities. My understanding is that Transcom also purchases telecommunications services from CLECs (or here, Halo) that provide transmission from the edge of Transcom's network in order to transport calls to any other network as necessary for termination. Halo has

carrier service"), *aff'd on remand*, Memorandum Opinion and Order, 12 FCC Rcd 17930 (1997); Memorandum Opinion and Order *AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, File No. ENF-88-05, 4 FCC Rcd 3429, 3431, ¶ 20 (CCB 1989) (service is an enhanced service if the information provided is "not incidental" to the basic telecommunications service, but rather is "the essential service provided").

[3] The common dictionary meaning of "adjunct" is "something added to another thing but not essential to it." *See* adjunct. Dictionary.com. Dictionary.com Unabridged. Random House, Inc. http://dictionary.reference.com/browse/adjunct (accessed: March 28, 2012).

relied on the fact that Transcom does not *provide* raw transmission or provide telecommunications; our understanding and position is that it *buys* telecommunications from other vendors and then adds the enhanced capabilities from its platform elements that are connected to each other via telecommunications.

In summary, and based on advice of counsel, we believe the "contamination" doctrine, rather than the "adjunct to basic" rule applies to the services Halo offers to Transcom. Halo's belief and understanding is that Transcom changes content, and is not providing any telecommunications. Thus, we contend that Transcom is an end user. End users are "end-points." End users originate calls, and calls terminate to them. Based on law and precedent, we don't believe it is correct to simply "skip over" Transcom and look through to how or where a call started. The ILECs (and even the FCC) are applying the same "end to end" call theory that Halo's counsel has advised me the D.C. Circuit conclusively held was unlawful in *Bell Atlantic*. Our position is thus that the traffic in question here is not access traffic. Rather, it is wireless end user originated traffic, and thus there is no breach of our AT&T ICA. I will leave further response to the portions of the Opposing Party Testimony regarding Transcom's ESP status to Mr. Johnson.

Q: Please set aside the question of whether Transcom is an ESP. In other words please assume for a moment that Transcom has not claimed ESP status. Would elimination of the "ESP issue" from the case necessarily mean that Opposing Parties win the day?

A: Not in our view. We believe the ESP question is important and determinative in our favor, but even if one sets aside Transcom's ESP status, or, even if the Commission were to find that Transcom is not an ESP, that does not mean the Opposing Parties win the day. This is because under the FCC's rules, there are only two types of customers: carriers and end users.

Any customer of a telecommunications service that is *not a common carrier* is an end user. Since Transcom is not a common carrier it must be an end user. As I said above, end users originate communications. They are end points. In Missouri, the "Transcom as end user end point" is in the same MTA as the called party. While we recognize the FCC disagreed that "Transcom" is not the originating point *for purposes of the intraMTA rule* that does not resolve the inquiry, because the FCC's decision does not justify the separate issue of whether the traffic "originated from wireless equipment" for purposes of the contract provision. Equally important, it does not at all resolve another question: where and how the call might have actually "originated" for other purposes.

Q: Please explain you latter point.

A: Based on the advice of counsel, it is my understanding that the FCC did not rule that any of this traffic actually "originated" anywhere in particular. All they held was that *for purposes of the intraMTA rule* it did not originate on Halo's network. What the ILECs here are trying to do is extend the FCC ruling to go farther than it really did. I also note that they necessarily disagree with the FCC's characterization that Halo is providing "transit" and they are simultaneously arguing that Halo is not the originating carrier but trying to have the Commission treat Halo as if it is the originating carrier for purposes of the ERE rule. The FCC order simply cannot be stretched to address or resolve the question of "where" and "how" any given call "originated" for any purpose other than the "intraMTA rule."

Q: Do the ILECs make any other unsupported assumptions?

A: Absolutely. All of them assume without any factual support or even admitting they are doing so that the calls actually originated on a legacy circuit-switched network by a basic

telephone exchange service customer who dialed "1+" to make a toll call through their preferred IXC.

Q: Why is that important?

A: Because that is the only way any of the traffic in issue could have possibly ever touched any Feature Group D exchange access arrangement.

Q: Did the ILECs present any evidence that a single call was "originated" by an end user on an ILEC's legacy circuit-switched network who dialed 1+ and was trying to make a telephone toll call using a traditional IXC?

A: No. They are assuming that this occurred merely because they see a telephone number – the originating caller identification Halo faithfully signaled at all times.

Q: Even if one assumes that some calls did start out from an end user consuming legacy circuit-switched telephone exchange service provided by an ILEC to make a 1+ call handed by an IXC (and therefore the call was routed over originating Feature Group D) can that be deemed to be a violation of the ERE rules?

A: No. The ERE rule 240-29.030(3) says that "no *originating wireline* carrier shall place interLATA traffic on the LEC-to-LEC network. Halo is not a "wireline" carrier. The ILECs uniformly say Halo is not the "originating" carrier. Thus there is no way this rule could be involved or violated in this case. 240-29.030(3) says "no carrier shall *terminate* traffic on the LEC-to-LEC network, when such traffic was originated by or with the use of feature group A, B or D protocol trunking arrangements." Halo is not the terminating carrier. Halo is not, and never has "terminated" traffic on the LEC-to-LEC network. Therefore, this rule also simply does not apply.

RESPONSE TO RLEC WITNESSES

Q. The RLEC Witnesses Claim that Halo has used their networks without paying appropriate compensation or attempting to negotiate interconnection agreements with the RLECS like other CMRS providers. How do you respond?

These allegations are totally false and without merit. It is certainly true that Halo started operations in the AT&T operating territories with only AT&T ICAs, relying on the rather expensive transit provisions of these agreements to reach independent third party carriers. This was both lawful, and practical. With thousands of carriers across the country, it is simply not practical for a new provider to obtain agreements with all of them at the outset. The FCC has recognized this as such, and thus does not require new carriers to obtain these agreements prior to service launch.

Based on the advice of counsel and the FCC's rules, it was Halo's understanding that when carriers are indirectly interconnected (as was the case with Halo and the RLECs in Missouri), all "non-access" traffic is subject to a "no compensation" regime unless and until the indirectly interconnected carriers enter into a written ICA. It was also Halo's understanding that under 47 CFR § 20.11(e), ILECs (but not "CLECs") were allowed to send a written "request for interconnection" that "invoke[s] the negotiation and arbitration procedures contained in section 252 of the Act" to a CMRS provider. *See* At that point, the carriers were required to negotiate terms implementing their respective duties under section 251(a), (b) and, if applicable, (c). It was also Halo's understanding that under 47 CFR § 20.11(e), if the parties are unable to resolve all issues through negotiation, the incumbent may request that the CMRS provider "submit to arbitration by the state commission."

Q. Did the RLECs in the MOPSC Proceedings initiate the interconnection negotiation process you described under 47 CFR § 20.11(e)?

A. Based on Halo's understanding of the applicable rules, none of the RLECS in the MOPSC Proceedings properly invoked the process I described. This is significant because had they sent the simple letter complying with the rules, interim compensation payments would have been paid to them, as Halo did with multiple other similarly situated carriers to whom Halo paid such interim compensation payments, but only after they sent a proper request to Halo. The RLECs to whom Halo paid interim compensations were both large and small, including all of the applicable Windstream RLEC entities, and dozens of small independent RLECs. So Halo did not treat anyone differently. However, the RLECs themselves fell into two camps. Those that adhered to the old 20.11(e) interim compensation rules, and those that decided these rules did not support the outcomes they desired, so they chose to ignore them. Those that chose the latter path did so at their sole discretion, in the hopes they'd receive higher compensation at the end of the day. To then base a claim that Halo has, or is, using their networks for free, is beyond preposterous. But this is what they want this Commission to believe.

Q. When did the RLECs involved in this proceeding begin receiving Halo traffic, and how did they respond?

To Halo's knowledge, the various RLECS represented by Mr. William England (the "England RLECs") in these proceedings began receiving Halo traffic on or about November 2010. Beginning on or about November 30, 2010, the England RLECs began issuing invoices to Halo for access charges or claimed reciprocal compensation billings based on allegations by the England RLECs that Halo was obligated to pay such sums. When Halo refused to pay these billings because they violated Rule 20.11, some of the England RLECs then began to "block"

Halo's traffic as a means to coerce Halo into waiving its rights. Halo responded to the billings beginning in December 2010, by way of "disputes," observing that the access billings violated rule 20.11(d), and under the *T-Mobile Order*,[4] no compensation would be due unless and until there was a permanent written agreement or at least an interim arrangement like that contemplated by rule 20.11(e). Over the next several months, the parties exchanged other similar communications wherein each stated and restated their respective positions.

The England RLECs have, from time to time, purported to be interested in using the FCC's remedy set out in rule 20.11(e) that would allow them to initiate negotiations, and if necessary, obtain a state-level arbitration. Halo has advised the England RLECs that those who are ILECs are free to do so at any time. All they have to do is "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act." *See* 47 C.F.R. § 20.11(e). To date, Halo has received letters from the following England RLECs that the England RLECs have contended adequately comply with rule 20.11(e) requirements: Citizens, Green Hills and GHTS (December 30, 2010 letter from William England to Halo) (See Wiseman Exhibit 3); Goodman, Granby, Grand River, Lathrop, McDonald County, Oregon Farmers, Ozark, and Seneca (January 26, 2011 letter from William England to Halo) (See Wiseman Exhibit 4); Rock Port (January 27, 2011 letter from William England to Halo) (See Wiseman Exhibit 5); Ellington, Farber, Fidelity, FCSI, FCSII, Holway, Iamo, Kingdom, K.L.M., Le-Ru, Mark Twain, MTCC, New Florence, Steelville (February 17, 2011 letter from William England to Halo) (See Wiseman Exhibit 6); BPS, Craw-Kan, Miller, New London, Orchard Farm, Peace

[4] 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 Order*"). This was the proceeding in which the FCC promulgated rules 20.11(d) prohibiting tariff charges for non-access traffic, and 20.11(e) which afforded ILECs the opportunity to compel interconnection and use of the section 252 process if they both "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act."

Valley, Stoutland (February 25, 2011 letter from William England to Halo) (See Wiseman Exhibit 7).

Halo responded to those letters and repeatedly pointed out that the "requests" do not meet the requirements of rule 20.11(e). (See Wiseman Exhibits 8 through 13). First, several of the above listed entities (Green Hills, FCSI, FCSII and MTCC) are not ILECs, and thus, are not eligible under the rule. Second, even as to those England RLECs that are ILECs, the letters were deemed deficient. The letters request "negotiations with Halo Wireless (Halo) toward an Agreement pursuant to Section 251 of the Telecommunications Act of 1996" or "seek to initiate negotiations toward an interconnection agreement pursuant to Sections 251 and 252, as envisioned by the FCC in its 2005 *T-Mobile* decision." None of the letters "request interconnection," and, while the question is admittedly a bit closer, they do not specifically "invoke the negotiation and arbitration procedures contained in section 252 of the Act."

Based on advice of counsel, it is my understanding that "requesting "negotiations" is much different than "requesting interconnection." "Interconnection" is a term of art and it has a very specific meaning: "Interconnection" under sections 251(a) and 251(c)(2) (along with the "physical connections" referred to in section 332(c)(1)(B), which in turn implements the "physical connection" aspects of section 201(a)), means "the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." *See* 47 C.F.R. 51.5; *see also Competitive Telcoms. Ass'n v. FCC*, 117 F.3d 1068, 1071 (8th Cir. 1997). Requesting "interconnection" is a <u>substantive</u> requirement. Then, in addition, one must invoke the "negotiation and arbitration procedures contained in section 252 of the Act" in order to start the <u>process</u> by which contract terms covering interconnection, traffic exchange and the other duties set out in section 251. These are independent and separate requirements. The

process simply does not start until the "requesting carrier" at least delivers "a request for interconnection, services, or network elements pursuant to section 251." *See* § 252(a)(1). The England Defendants flatly refused to do either of these two very simple things. Again, these things are what other RLECs either did from the start, or did after Halo pointed out these deficiencies. They did not modify their letters because of greed. They wanted higher compensation than what 20.11(e) afforded them. They also did not want to be the requesting carrier, and bear the burden of negotiations and service delivery that this status implies. They wanted this burden to fall on Halo, and they wanted to limit what could be negotiated.

To Halo's knowledge, the RLECs represented by Mr. Craig Johnson in these proceedings (the "Johnson RLECs") began receiving Halo traffic on or about November 2010. Beginning on or about January 1, 2011, the Johnson RLECs issued invoices to Halo for access charges. Halo responded to the billings beginning in February 2011, by way of "disputes," observing that the access billings violated 20.11(d), and under the *T-Mobile Order*, no compensation would be due unless and until there was a permanent written agreement or at least an interim arrangement like that contemplated by 20.11(e). Over the next several months, the parties exchanged other similar communications wherein each stated and restated their respective positions.

In stark contrast to the England RLECs, the Johnson RLECs expressly disclaimed any intent to use the FCC remedy. For example, in his March 7, 2011 letter to Halo (See Wiseman Exhibit 14). Mr. Johnson stated, "to be clear, Mid-Missouri has not requested interconnection agreement negotiations with Halo. Mid-Missouri has informed Halo that it can avoid the blocking request by requesting negotiations with Mid-Missouri to adopt or establish an interconnection agreement." Although Halo has had some discussion with the Johnson RLECs about negotiations, the Johnson RLECs have to date refused to use the FCC-prescribed process

and remedy in favor of instituting blocking (and then filing a state commission complaint) in order to coerce Halo into abandoning that process, waiving its rights, and agreeing to terms Halo would not otherwise accept.

Q: Did Halo ever refuse to negotiate with any Missouri ILEC?

A: Absolutely not. We consistently told them we would negotiate in good faith. We sent them proposed ICA terms. We told them how they could secure interim payment. We never refused at any time to negotiate. They simply did not like our negotiating position, and chose to take unilateral action rather than following the process for negotiation and state arbitration set out in the federal Act and FCC rule 20.11.

Q. Do you find any other issues with the RLEC Witnesses' Testimony?

A. There are multiple factual and logical problems with the testimony of the RLEC witnesses which has already been addressed in my direct testimony and which I could further address here. However, one of the most fatal flaws in their claims against Halo is their acknowledgement that their refusal to negotiate with Halo, their bases for disputing Halo's business model, and the claims they are now pursuing are all based on unidentified industry reports and rumors, unverified traffic studies from AT&T, and their unsubstantiated belief that access charges must be due. In other words, the RLEC Witnesses have not done any legitimate analysis of real facts or data to support the conclusions and claims they assert.

Q: Does this conclude your testimony?

A: Yes. I reserve the right to make corrections of any errors we may discover by submitting an *errata*.