BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Halo Wireless, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
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,	)	**File No: TC-2012-0331**
Miller Telephone Company,	)	
Ozark Telephone Company,	)	
Rock Port Telephone Company,	)	
Seneca Telephone Company,	)	
Alma Communications Company, d/b/a	)	
Alma Telephone Company,	)	
Choctaw Telephone Company;	)	
MoKan Dial, Inc.,	)	
Peace Valley Telephone Company, Inc., and,	)	
Southwestern Bell Telephone Company, d/b/a	)	
AT&T Missouri	)	
	)	
Respondents.	)	

STAFF'S INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief*, states as follows:

Introduction

Statement of the Case:

Although this case arises directly from Halo's response to a notice from the local exchange telecommunications companies ("LECs") that Halo's telecommunications traffic was soon to be blocked, the case really arises from a dispute among numerous

telecommunications carriers handling voice traffic within Missouri. Numerous LECs argue that Halo Wireless, Inc. ("Halo"), together with an affiliated company called Transcom,[1] is engaged in an access charge avoidance scheme wherein it routes a landline[2] call onto a wireless network, allegedly "enhances" it, then returns it to the landline network, having changed the accompanying data so that the origination of the call is misidentified. Halo asserts that this "wireless-in-the-middle" or "enhanced-services-in-the-middle" call routing changes the nature of the call into a wireless or enhanced services call, a position with which the LECs and the Staff most strenuously disagree.

The "Rural LECs" (those other than AT&T) assert that this scheme violates the provisions of the Commission's Enhanced Record Exchange ("ERE") rules, which permits them to reroute the telecommunications traffic in question off the network the LECs use among themselves and onto the long distance network. The Staff agrees with them.

Southwestern Bell Telephone Company, d/b/a AT&T Missouri ("AT&T"), asserts that Halo's conduct breaches the interconnection agreement ("ICA") between them and that AT&T is no longer required to adhere to it. The Staff agrees with AT&T.

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[1] Halo claims that Transcom is an end-user customer, but the Staff agrees with the LECs that Transcom and Halo are related through common control. Even if they are not related, they are acting in concert to perpetuate this access- avoidance scheme.

[2] Throughout the proceeding and in the pleadings, the Parties interchangeably use the terms "wireline" and "landline," which mean the same thing.

Procedural History:

On June 1, 2011, several Rural LECs filed a complaint (File Number IC-2011-0385) against Halo alleging it was improperly terminating traffic to those Rural LECs without an interconnection agreement and without paying proper compensation to terminate that traffic. The Rural LECs sought a finding of violation of the Commission's ERE rules and asserted monetary damages.[3]

On June 22, 2011, several more Rural LECs filed a complaint (File Number TC-2011-0404) against Halo, alleging the same issues complained of in File Number IC-2011-0385, asserting the same sort of damages and requesting the same relief.

On August 1, 2011, the Rural LECs filed an Application for Rejection of Portions of an Interconnection Agreement [between Halo and AT&T], denominated File Number TO-2012-0035. They stated that the transiting provisions of the agreement, whereby Halo is permitted to send traffic through its interconnection with AT&T for termination to the Rural LECs, is improper, in that the agreement obligates Halo to obtain agreements with the Rural LECs, but Halo has failed to do so, and that the interconnection is discriminatory to carriers not party to it.

On August 10 and 12, 2011, Halo notified the Commission that it had filed a voluntary petition for relief under Chapter 11 of the United States Code, pertaining to bankruptcy, and that the Commission was stayed from proceeding further under

[3] As will be discussed below, some of the traffic really is wireless, but some of the traffic is wireline. Assuming terminating intrastate access charges apply, the damages at that time asserted by the Rural LECs would be $459,000; assuming intraMTA reciprocal compensation, the damages would be $123,000. As the traffic is a mix, the actual damages to the Rural LECs at that time would be somewhere between those numbers. In addition, AT&T estimated that Halo owes it $1.8 million in unpaid access charges. Tr. at 134.

Section 362 of the Bankruptcy Code in the three cases discussed above. On August 16, 2011, the Commission issued an Order indefinitely staying the proceedings in all three cases. On August 19, 2011, Halo removed the matters to Federal Court, but the matters were remanded to the Commission by the United States District Court, Western District of Missouri, on December 22, 2011.

On December 29, 2011, the Commission issued notice of those orders, and on January 17, 2012, the Commission reactivated File Number TO-2012-0035 based upon the unopposed request of the LECs. Once this file was reactivated, the remaining Rural LECs joined this complaint. With the resumption of the procedural deadlines, AT&T answered in File Number TO-2012-0035 stating there was no basis in law for the Commission to reject an approved interconnection agreement, but that Complainants could block Halo's traffic pursuant to the Commission's ERE rule. Consequently, at the request of the Complainants, the Commission held File Number TO-2012-0035 in abeyance pending the outcome of the ERE rule proceedings. However, no party sought to reactivate File Numbers IC-2011-0385 and TC-2011-0404. The ERE rule is self-executing. Pursuant to it, blocking can commence unless a complaint is filed by the company subject to the traffic blocking.

On April 2, 2012, Halo filed a complaint (File Number TC-2012-0331) in response to blocking notices from AT&T and the Rural LECs. As the complaints in File Numbers IC-2011-0385 and TC-2011-0404 addressed the same issues as the Halo Complaint, the Commission dismissed those two actions and has held File Number TO-2012-0035 in abeyance. On May 1, 2012, the Rural LECs moved to consolidate File Numbers TO-2012-0035 and TC-2012-0331. In addition,

on May 5, 2012, AT&T raised in a counterclaim its assertion that Halo has materially breached its interconnection agreement and asks that the Commission excuse any further performance thereunder. On May 17, 2012, the motion to consolidate was granted.

The matter proceeded to hearing on a consolidated basis on June 26 and 27, 2012, on the following issues:[4]

A. Blocking Under the Missouri ERE Rule

(1) Does 4 CSR 240-29.010 *et seq.*, (the "Missouri ERE Rule"), apply to Halo's traffic?

(2) Has Halo placed interLATA wireline telecommunications traffic on the LEC-to-LEC network?

(3) Has Halo appropriately compensated the Respondents for traffic it is delivering to them for termination pursuant to Halo's Interconnection Agreement with AT&T?

(4) Has Halo delivered the appropriate originating caller identification to Respondents along with the traffic it is delivering to them for termination?

(5) Is the blocking of Halo's traffic in accordance with the ERE rules appropriate?

B. AT&T's ICA Complaint

(1) Has Halo delivered traffic to AT&T Missouri that was not "originated through wireless transmitting and receiving facilities" as provided by the parties' ICA?

[4] Halo did not agree to the issues list submitted by the other Parties, including the Staff. Halo submitted a list of 41 separate issues (see item 90 in EFIS), which the Staff believes are all subsumed within the list of issues agreed to by the other Parties, and set forth in this Brief.

(2) Has Halo paid the appropriate compensation to AT&T Missouri as prescribed by the parties' ICA? If not, what compensation, if any, would apply?

(3) Has Halo committed a material breach of its ICA with AT&T Missouri? If so, is AT&T Missouri entitled to discontinue performance under the ICA?

Argument

What is this case about?

This case is about blocking telecommunications traffic for failure to pay access charges. When the customer of one company "A" calls the customer of another company "B," then A must pay B for the termination of the call. If both customers are within the same local calling area, then the companies pay each other reciprocal compensation. For landline calls, local calling areas developed over decades, usually consolidating into larger and larger local areas.

When the customers are in different local calling areas, the tariffed terminating access charge applies. These tariffed rates also developed over decades, and tend to be much higher than reciprocal compensation. For this reason, a company required to pay terminating charges would prefer reciprocal compensation rates over access rates.

If the callers are in different states, interstate access charges apply. Interstate access charges, governed by the FCC and not this Commission, are also significantly lower than intrastate rates. As above, a company required to pay terminating charges would prefer interstate access rates over intrastate access rates.

When mobile phones (commercial mobile radio service, referred to as "cell phones") came about, the old local calling scopes were made inapplicable to wireless calls through the imposition of "major trading areas" ("MTAs") by the

Federal Communications Commission ("FCC"). An MTA serves as a local calling scope for cell phones; calls within an MTA are subject to reciprocal compensation rates, rather than access rates. As Missouri is divided roughly in half, with the Kansas City MTA and the St. Louis MTA, calls to, from or between cell phones are usually compensated at the reciprocal compensation rate. Moreover, companies are able to negotiate the reciprocal compensation rates, even to go to "bill and keep"[5] if they wish.

These rate disparities create a great incentive for companies to disguise landline traffic as cell phone traffic, or to disguise intrastate traffic as interstate traffic, which is what all the other Parties argue that Halo did.

As Halo so ably demonstrated during the hearing,[6] it is easy for the technically savvy to alter the calling party information to make a call appear to be interstate when it is intrastate, or make a landline call appear to be a cell phone call. The Staff's position is that Halo's traffic should be "blocked"[7] pursuant to the ERE rule as soon as possible. Not only is Halo essentially stealing from the Rural LECs by not paying the tariffed access rates, but the fact is that Halo is (by getting away with such stealing) being

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[5] "Bill and keep" is the telecommunications industry jargon for a relationship between two carriers in which no compensation of any kind, reciprocal compensation or access charges, flows between the companies. I bill my customer and get to keep it all (without sharing with you) and you get to do the same with your customers.

[6] Tr. At 472-473.

[7] The call blocking referred to in this matter is actually a forced re-routing of the call from one network to the other. As discussed above, wireless traffic within an MTA is to be treated as local, subject to reciprocal compensation rates. In that instance, if Halo had a traffic termination agreement with the terminating carrier, it would be appropriate to send that traffic over the LEC-to-LEC network (also called the Feature Group C network). As Halo was not sending intra-MTA cell phone traffic, nor did it have traffic termination agreements with the vast majority of the Rural LECs, its traffic was not properly sent over the LEC-to-LEC network. Putting the "blocking" in place will cause the caller to receive an intercept message telling them to dial "1" before the area code to complete the call. This "1+" dialing automatically sends the call to the long-distance network (also called the Feature Group D network), where access charges, either intra- or interstate, will be applied.

charged a rate lower than other similarly situated companies. Such preferential treatment is directly contrary to the Commission's most basic regulatory duty: to ensure that similarly-situated customers are charged the same rate for the same service.

Access Charge Obligations:

Halo violated Missouri law by failing to pay tariffed access charges. The requirement to deliver messages as they are received, in an unaltered fashion, to the next carrier and the requirement to pay access charges for telecommunications traffic that traverses or terminates on another carrier's network have long existed under Missouri law:

> **392.130. Companies to provide facilities to meet public needs--penalty for failure to deliver messages.** It shall be the duty of every … telephone company… to receive dispatches from and for other telephone … lines …, and on payment or tender of their usual charges …, to transmit and deliver the same to designated address …with impartiality and good faith under a penalty of three hundred dollars for every neglect or refusal so to transmit and deliver […].
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> **392.140. Duties in forwarding dispatches over other lines.** Where the person sending the dispatch desires to have it forwarded over the lines of other telephone … companies, … to the place of final destination, and shall tender to the first company the amount of the usual charges for the dispatch to the place of final delivery, it shall be the duty of the company to receive the same, and, without delaying the dispatch, to pay to the succeeding line the necessary charges for the remaining distance; … and for omitting so to do the company or companies owning or operating such line or lines shall severally be liable to the penalty prescribed in section 392.130.
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> **392.470. Conditions, commission may impose, when--compensation to other companies, when, commission may order.**
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> 1. The commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the provisions and purposes of this chapter, including, but not limited to, determining that any such company should provide just

> and reasonable compensation to one or more other certificated telecommunications companies operating in areas in which the compensating company is providing intrastate telecommunications service without commission authorization.
>
> * * *
>
> 2. An order of the commission issued under subsection 1 of this section which determines that compensation should be provided shall be enforced and subject to continuing enforcement by the circuit courts of this state, unless stayed pending review pursuant to section 386.520. The venue of such an action shall lie in any county in which the subject telecommunications company is providing unauthorized telecommunications service.

In short, a carrier must transmit the message, along with all of the necessary signaling information[8] and with the appropriate payment. Halo received landline calls from other telecommunications carriers, altered them by transmitting them through fixed-location wireless facilities that attached new signaling information to them, then further transmitted them to other carriers without paying the terminating access charges associated with those calls.[9] Although this process is a more expensive and less reliable[10] way to transmit a call, those detriments are countered by the immense savings afforded by the illegal access avoidance scheme the process facilitates.[11] The insertion of a fixed wireless station, a cell phone tower and another fixed wireless station along a call route

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[8] The Public Switched Telecommunications Network ("PSTN") uses time division multiplexing ("TDM") or Signaling System 7 ("SS7") as the signaling protocol to route, bill and manage calls. SS7 uses out-of-band signaling – it essentially carries a separate "packet" of signaling information separate from, but linked to, the voice transmission. *See Newton's Telecom Dictionary.* However, according to the FCC, the goal is to facilitate industry progression to all Internet protocol ("IP") networks. *In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking,* WC Docket No. 10-90, et al., FCC 11-161 (rel. Nov. 18, 2011); National Broadband Plan at 49.

[9] Tr. at 223; EFIS item 75, p.4.

[10] Tr. at 240; EFIS item 75, p.8.

[11] See note 2, *supra.*

serves no legitimate business purpose.[12] The equipment is not able to initiate or terminate a call.[13]

Calling Party Number Identification Transmission Obligation:

Under federal law, carriers are required to pass along the calling party number as well as the called number:

> **§ 64.1601 Delivery requirements and privacy restrictions.**
> (a) *Delivery.* Except as provided in paragraph (d) of this section, common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers. (47 CFR § 64.1601)

The Commission's ERE rules provide as follows:

> **4 CSR 240-29.030 General Provisions**
> (3) 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.
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> **4 CSR 240-29.040 Identification of Originating Carrier for Traffic Transmitted over the LEC-to-LEC Network**
> (1) All telecommunications companies that originate traffic that is transmitted over the Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) network shall deliver originating caller identification with each call that is placed on the LEC-to-LEC network.
> (2) All telecommunications carriers that transit LEC-to-LEC traffic for another carrier shall deliver originating caller identification to other transiting carriers and to terminating carriers.

Again, the law is overwhelmingly clear that Halo has an obligation to transmit the message, along with the actual calling party number. Halo's alteration of the calling party number by using wireless-in-the-middle, or even enhanced-services-in-the-middle,

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[12] Tr. at 223-240; EFIS item 75, p. 8-10.

[13] Tr. at 223-225 and 230-231; EFIS item 75, p. 8-10.

does not alter the landline nature of a call[14] any more than failed attempts to claim that VoIP-in-the-middle would change the nature of the landline call.

As this is a landline or wireline call, all of the state and federal requirements apply to the Halo traffic.[15] As the traffic transmission fails to meet the legal requirements

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[14] In the *Connect America Fund Report and Order*, FCC 11-161, *supra*, at ¶1005, the FCC noted:

> We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."
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> 1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that 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.
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> 1007. In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area, the call is subject to access charges, not reciprocal compensation, even if the call originates and terminates within the same MTA. One commenter in this proceeding asks us to affirm that such traffic is subject to reciprocal compensation. We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC. Similarly, intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.

(the calling party number, and in many instances other identifying information, has been altered), it is subject to blocking or any other available remedy.

Terminating Carrier's Options for receipt of Halo's traffic:

The Rural LECs acted properly in attempting to block Halo's traffic and AT&T acted properly in receiving their request and making blocking preparations.

> **4 CSR 240-29.050 Option to Establish Separate Trunk Groups for LEC-to-LEC Telecommunications Traffic**
> (1) At its discretion, a terminating carrier may elect to establish separate trunk groups for interexchange carrier (IXC) and Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic. Terminating tandem carriers shall work cooperatively with, and abide by requests of, terminating carriers to establish separate trunking arrangements for IXC and LEC-to-LEC traffic occurring between a terminating tandem carrier and a terminating end office.

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[15] Attached to this brief, as Attachment A, is the decision of the Georgia PSC, deciding exactly the same issue: "[T]he FCC is very clear that what Transcom and Halo are doing does not constitute originating the call. The Staff's recommendation on this point is consistent with the recent decision of the Tennessee Regulatory Authority. Based on Halo's *ex parte* filings with the FCC, the TRA concluded that the FCC was aware of Halo's re-origination theory when it issued the *Connect America Order*. (McPhee Direct Ex JSM-9). The FCC has previously rejected similar ESP-origination theories. *See,* Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services,* 20 FCC Red. 4826 (2005) *aff'd, AT&T Corp v. FCC*, 454 F. 3d 329 (D.C.Cir. 2006).

> Furthermore, TDS Telecom witness Drause, testified that the equipment that Transcom uses at its tower sites is not capable of originating a phone call. Transcom equipment might be used to transport a call, but unlike a wireless handset, it does not contain the intelligence necessary to actually originate a phone call on its own. (Tr. 250).
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> For all of the reasons discussed above, the Commission concludes that the calls at issue in this proceeding constitute a single call. The clear language of the FCC Order together with the factual testimony in the record supports the conclusion that the calls are not originated by Transcom. Therefore, even if Transcom was an ESP, it would not alter the Commission's conclusions with regard to its jurisdiction over the subject traffic, Transcom and Halo's liability with regard to the subject traffic, or the alleged breach by Halo of its interconnection agreement with AT&T. Furthermore, as discussed above, the evidence shows that a majority of the traffic at issue was originated through a landline provider and not a CMRS provider. Georgia Order 34219, issued July 17, 2012. All of the witnesses above testified in the present matter, although Mr. Drause was sponsored by AT&T in the present case.

4 CSR 240-29.130 Requests of Terminating Carriers for Originating Tandem Carriers to Block Traffic of Originating Carriers and/or Traffic Aggregators

(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 to the transiting and/or terminating carriers.

(4) The terminating carrier shall provide all affected carriers, … written notice … at least thirty (30) days prior to the date the … blocking [will] occur. Such notification shall clearly indicate the reason(s) for [the block], the date the [block will begin], [and] an explanation of [how the carrier can prevent the block]. * * *

(5) Following [the] notification … above, and … written request by a terminating carrier, the originating tandem carrier will be required to block [the] LEC-to-LEC traffic ... Such requests shall be based on the terminating carrier's representation that the [carrier to be blocked] has failed to fully compensate the terminating carrier … or … has failed to deliver originating caller identification …

(9) If an originating carrier and/or traffic aggregator wishes to dispute a [proposed block], the … carrier … should immediately seek action by the commission through the filing of a formal complaint. Such a complaint shall provide all relevant evidence refuting any stated reasons for blocking such traffic or placing disputed charges into escrow. Such complaint shall include a request for expedited resolution.

(10) If an originating carrier and/or traffic aggregator file(s) a formal complaint, the terminating carrier and originating tandem carrier shall cease blocking preparations, pending the commission's decision. […]

In this case, the Rural LECs have chosen to institute blocking because many of the calls are wireline and do not carry proper identification of the calling party number. Halo does not terminate only wireless intraMTA calls to the LEC-to-LEC network; it also terminates interLATA and even interstate wireline traffic, which may not lawfully be delivered over the LEC-to-LEC network. Halo masks the originating number, so that AT&T's switches mistake the traffic for intraMTA wireless traffic. The testimony of the

Rural LEC business managers,[16] who asserted that they had engaged in sufficient investigation to determine that a large percentage of the traffic[17] that was terminated to them by Halo (through AT&T) was not wireless traffic, was highly credible.[18] The Staff has no doubt that, if it were inclined to do so, it could request and be shown the data from that investigation and that it would demonstrate exactly what the Rural LECs say it does.

Actions in other states indicate that Halo is engaging in the same pattern of activity elsewhere.[19] In addition to describing the scheme to the FCC, which, as noted above, utterly disagreed with Halo's interpretation and stated rather firmly that calls that originate and terminate as landline calls are unaltered in their nature[20] or their jurisdiction[21] by anything that happens in the middle of the call. It is only the actual beginning and ending of the call that matter in such determinations. So far, all the states in which this has been litigated agree.

The anecdotal evidence provided by the witnesses is consistent with the material the Staff is seeing in the Call Gapping investigation. Although that material is not in evidence, the Staff can say that certain information disclosed during the hearing clarified for the Staff how and why certain problems are seen in the call gapping matter.

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[16] Tr. at 374 - 379.

[17] AT&T's investigation determined that approximately 71% of the traffic was landline. EFIS item 67, pp. 11-30.

[18] A list of the Rural LEC witnesses is given in EFIS item 87.

[19] The total number of actions now appear to be more than twenty, taking place in thirteen jurisdictions. *In re Halo Wireless, Inc.*, 2012 WL 2212429 (5th Cir 2012).

[20] That is, landline, IVoIP, wireless or enhanced services (Internet access).

[21] That is, whether they are local, intra-MTA, intrastate or interstate, etc.

The testimony that the inefficient and less reliable transport of calls, which can serve no legitimate business purpose, are exactly what is necessary to accomplish what the Rural LECs say it does. [22]

Halo demonstrated at the hearing its ability to alter the calling party number, by directing a call on a cell phone that appeared to originate on Mr. Voight's office phone, to Mr. Voight while he was on the witness stand.[23]

Halo does not directly deny alteration of the calling party number, but rather asserts that it re-originates the call as a wireless call or an enhanced services call, both of which claims are completely wrong.[24]

The FCC agreed with the documentation provided by the Rural LECs in its recent proceeding.[25]

There is no impediment to the Commission's ability to permit the proposed blocking:

Halo has repeatedly asserted that the existence of the bankruptcy proceeding precludes the Commission from allowing its traffic to be blocked. The federal courts have repeatedly confirmed that the Commission's ability to effectively regulate telecommunications services in Missouri is unaffected by the bankruptcy proceeding.

On October 26, 2011, the Bankruptcy Judge entered an *Order Granting Motion of the Texas and Missouri Telephone Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay* (see EFIS Case No.AP11-42464, Item No. 167).

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[22] Tr. at 223-240; EFIS item 75, p. 8-10.

[23] Tr. at 472-473.

[24] Tr. at 118; EFIS item 72, pp. 40-49, 80-81; EFIS item 73, pp. 28-29; EFIS item 80, pp. 4-5.

[25] See note 6 above.

In it, Judge Rhoades noted that the **only** two areas that were still within the stay were: liquidation of the amount of any claim against the Debtor and any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor. She also noted that if the Commission were to determine that it has jurisdiction over the issues raised in the above-referenced complaints and that Halo has violated state law over which the Commission has jurisdiction, then even those two matters might no longer be subject to the automatic stay.

On December 21, 2011 the US District Court for the Western District of Missouri most firmly determined that the Commission has the authority to proceed, and cited other courts reaching the same decision in other jurisdictions.[26]

Finally, on June 18, 2012, the United States Court of Appeals for the Fifth Circuit issued its opinion concerning Halo's appeal of the Bankruptcy Court's decision. It noted that local telephone companies initiated twenty separate suits against Halo before ten state public utility commissions. Halo filed for bankruptcy as a result of this collective action. [27]

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[26]ORDER entered by Judge Nanette Laughrey, Plaintiffs' motion to remand this case to the Missouri Public Service Commission ("the Commission") [Doc. #7] is GRANTED for the reasons expressed in Orders granting remand in similar cases by the Middle District of Tennessee [Doc. #32-1] and the District of South Carolina Bankruptcy Court, Bellsouth Telecomms., LLC v. Halo Wireless, Inc., No. 11-80162-dd (Bankr D.S.C. filed Nov. 30, 2011). The Commission has the authority to regulate the subject matter of this dispute, and the Court does not have jurisdiction over Plaintiffs' claims until the Commission has rendered a decision for the Court to review. To the extent Defendant argues that Plaintiffs' claims should first be decided by the FCC, this argument is mooted by the FCC's recent rulemaking decision rejecting Defendant's position and reaffirming that the power to regulate these issues lies with state agencies. In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., FCC 11-161 (rel. Nov. 18, 2011). Plaintiffs' request for costs and attorney fees for wrongful removal is DENIED. The propriety of removal was a complicated issue of law that Defendant appears to have pursued in good faith. In EFIS under File Number IC-2011-0385 at item 21.

[27] *In re Halo Wireless, Inc.*, 2012 WL 2212429 (5th Cir. 2012).

Halo continued its assertion that the state proceedings were stayed by the bankruptcy proceeding, but the Court responded,

> "[W]here a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay." [28]
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> * * *
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> "This exception discourages debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare."[29]

The court noted that the exception does not allow enforcement of a money judgment against the debtor, however; at most, a money judgment may be entered.[30] After noting that Halo "waxes hyperbolic," at one point, [31] the court found

> [T]he PUC actions at issue here pass both the pecuniary purpose and public policy tests outlined above, and are thus in furtherance of the states' regulatory and police powers. Through these proceedings, the states do not "primarily see[k] to protect a pecuniary governmental interest in the debtor's property, as opposed to protecting the public safety and health." *Nortel*, 669 F.3d at 139-40. None of the PUC proceedings would give the states access to Halo's property. In addition, the bankruptcy court's order ensures that if a PUC rules that Halo owes fees to one of the Appellees, no enforcement of any money judgment may take place without first going back to the bankruptcy court.

One of the Commission's core duties is to ensure that similarly situated customers of public utilities are charged the same rate for the same service. To allow Halo to

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[28] H.R. Rep. No. 95–595, at 343, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6299.

[29] *In re McMullen*, 386 F.3d 320, 324-35 (1st Cir. 2004); *see also In re Commonwealth Cos., Inc*., 913 F.2d 518, 527 (8th Cir. 1990) (stating that "a fundamental policy behind the police or regulatory power exception . . . is to prevent the bankruptcy court from becoming a haven for wrongdoers").

[30] *Brennan*, 230 F.3d at 71

[31] *In re Halo Wireless, Inc.*, 2012 WL 2212429 (5th Cir. 2012) at 12.

continue to receive an essentially discounted rate flies in the face of Missouri law. Section 392.200.2, RSMo, unambiguously requires as follows:

> No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions.[32]

Although Halo has managed to use both state and federal procedures to milk out the maximum delay, the Commission should most expeditiously put a stop to this access charge avoidance scheme, as Missouri law requires.

Halo's conduct violates the terms of its interconnection agreement with AT&T:

The interconnection agreement between AT&T and Halo contains the following provision:

> Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to [Halo]'s wireless network for wireless termination by [Halo]; and (2) traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network.[33]

As was made clear from the testimony of the Rural LEC witnesses, most of the traffic delivered through AT&T to the Rural LECs was not wireless-originated traffic, but was landline-originated traffic that was altered to appear as either intra-MTA wireless traffic or interstate traffic. The plain language of the interconnection agreement requires

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[32] EFIS item No. 88, at p.5.

[33] Direct Testimony of J. Scott McPhee, in Schedules JSM4 and JSM5, EFIS item 217.

that traffic between Halo and AT&T must either be wirelessly originated by the actual calling party, or be wirelessly terminated by the actual called party. As some of the traffic exchanged between Halo and AT&T was neither, the Staff asserts that the interconnection agreement has been breached by Halo at some point prior to June 1, 2011, and has been unenforceable from the time of that breach.

As the Staff argued above, the continued operation of the interconnection is discriminatory to other carriers, in that the continued illegal use of the interconnection agreement effectively gives Halo discounted access rates, to the detriment not only of the Rural LECs, but to every law-abiding competitor of Halo.

This preferential, discriminatory treatment is one of the grounds provided in federal law for rejection of a negotiated interconnection agreement:

> **§ 252. Procedures for negotiation, arbitration, and approval of agreements**
> **(a) Agreements arrived at through negotiation –**
> **(1) Voluntary negotiations -** Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.
> **(e) Approval by State commission -**
> **(1) Approval required -** Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.
> **(2) Grounds for rejection -** The State commission may only reject—
> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that—
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section. [emphasis (underline) added][34]

§ 253. Removal of barriers to entry –

(b) State regulatory authority - Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, 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. [35]

The Staff believes that the Commission would have the authority to reject an already-approved agreement if it met the standards set forth in §253(b). However, as the Staff noted above, the Halo and AT&T agreement was breached over a year ago. As such, the Commission need not reach the question of whether an approved interconnection agreement can be later rejected if it proves to be, in its application and enforcement, discriminatory to carriers not party to it and contrary to the public interest. In the present matter, the Commission need only find that the agreement has been breached and is no longer enforceable. The Commission should find that AT&T is excused from further performance under the agreement.

[34] 47 USC §252. Federal Statutory Reference, EFIS item 89, pp 5 and 7.

[35] 47 USC §253. Federal Statutory Reference, EFIS item 89, p. 9.

Halo and Transcom are Telecommunications Companies that should be certificated.

As has been amply demonstrated in this matter, at least some of the traffic transported by Halo and Transcom is intrastate landline traffic.[36]

Missouri law provides as follows:

> **386.020. Definitions.**
> (52) "Telecommunications company" includes … every … company… operating… facilities used to provide telecommunications service for hire [in] this state;
> (54) "Telecommunications service", the transmission of information by wire [or] radio... "[I]nformation" means knowledge or intelligence represented by… sounds... [exclusions from the definition listed].
> **392.410. Certificate of public convenience and necessity required, exception--certificate of interexchange service authority, required when--duration of certificates--temporary certificates, issued when--political subdivisions restricted from providing certain telecommunications services or facilities.**
> 1. … No telecommunications company … shall transact any business in this state until it shall have obtained a certificate of service authority from the commission …
> 2. No telecommunications company offering or providing …any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority ... .[37]

If the Commission determines that the interconnection agreement between AT&T and Halo is unenforceable and permits the Rural LECs to block the traffic from flowing over the LEC-to-LEC network, Halo and Transcom will no longer be able to transport telecommunications traffic in Missouri, which will moot out any concern about Halo's and Transcom's lack of certification. Although this was not contained in the issues list in this case, the Staff wishes to make clear that Halo and Transcom were legally required to be certificated in Missouri prior to the transport of landline telephone calls.

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[36] Tr. at 210-216; EFIS item 67, pp.11-30.

[37] Missouri Statutory Reference, EFIS item 88, pp. 8-10.

Was this scheme a deliberate attempt to violate the law or was it begun as merely a clever way to reduce Halo's and Transcom's access costs?

In his questions from the bench, Commissioner Kenney asked that the Parties attempt to address this question in their briefs. Having laid out the breadth of this scheme, occurring in so many states, in direct contradiction to the very clear wording of the interconnection agreement with AT&T, and providing evidence of the obstinate intransigence Halo and Transcom have shown in the face of court after court, and agency after agency, telling them that their activity is unlawful, the only conclusion the Staff can draw is that Halo and Transcom went into the scheme knowing it was wrong and planning the many ways of abusing its rights to due process that would delay the shutdown of the scheme. These companies are in bankruptcy, yet have spent lavishly on multiple proceedings across the nation. Their continued obduracy is costing Missouri ratepayers a great deal of money. As highlighted by the procedural history above, the litigation expense incurred by AT&T, the Rural LECs and the PSC have been extensive, including travel to Texas by the External Litigation Department of the General Counsel's Office. As the PSC is ultimately funded by the ratepayers, telephone customers across the state will bear the costs of this matter; Halo and Transcom, which are not certificated, pay no part of the PSC's annual assessment. It defies logic to think that this complex, convoluted scheme was not fully planned.

Conclusion

In conclusion, the Staff has shown that Halo and Transcom are engaged in an enterprise to deliberately steal access services from the Rural LECs. Although the Staff agrees that the present access regime across the United States and within Missouri is

overly complex and invites arbitrage, The FCC, in its recent Order[38] has established a transition of access rates and reciprocal compensation that will be completed for all carriers by the end of the year 2020. That will finally put an end to the financial incentives that caused Halo and Transcom to begin this access avoidance scheme and to fight so hard to continue it.

In the meantime, the Commission must act to stop the scheme and allow the transition the FCC has put in place to proceed unimpaired. To that end, the Staff restates its positions on the issues in this case.

4 CSR 240-29.010 *et seq.*, most definitely applies to Halo's traffic, as it is largely landline traffic, not wireless or enhanced service. The evidence in this case makes clear that Halo is not truly a wireless carrier and Transcom is not an internet service provider (the insertion of noise on a line does not make a company an "enhanced service provider" (synonymous with internet service provider). They transport telecommunications traffic that starts on the public switched network as wireline calls and end the same way. Whatever they do to the signaling protocol of the call in the middle, including the insertion of noise on the line, is irrelevant.

Halo and Transcom have placed interLATA wireline telecommunications traffic on the LEC-to-LEC network, in violation of the provisions of the ERE rule and its interconnection agreement with AT&T, as they did not negotiate interconnection agreements with the Rural LECs for the termination of wireline calls or traffic termination agreements for termination of wireless calls (except in one instance).

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[38] Connect America Fund Report and Order, FCC 11-161, supra, at ¶736 et seq.

Halo and Transcom have not appropriately compensated the Rural LECs, neither paying reciprocal compensation for any wireless traffic nor the applicable tariffed access charges for the wireline traffic it terminated to the Rural LECs.

Halo and Transcom often delivered traffic without the appropriate originating caller identification to the Rural LECs.

The Commission should permit the immediate blocking of Halo's and Transcom's traffic to all Rural LECs who wish to do so.

Halo breached its interconnection agreement with AT&T by sending wireline-originated traffic to AT&T for termination to the Rural LECs and by sending traffic to those LECs without having a traffic termination agreement in place (except in to one instance, for the wireless traffic only). This breach is material, and renders the agreement unenforceable. The Commission should clarify that AT&T has no further obligations under it.

WHEREFORE, on account of all the foregoing, the Staff prays that the Commission will find (1) that the Rural LECs may immediately block all traffic from Halo and Transcom, (2) that the interconnection agreement between Halo and AT&T is breached and unenforceable and AT&T is excused from any further performance under it, (3) that Halo and Transcom have delivered traffic to the Rural LECs that they have not properly compensated and the Rural LECs are entitled to such damages they can show in unpaid or underpaid amounts, and (4) that Halo and Transcom have engaged in the provision of telecommunications services in Missouri without requisite certification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this 23rd day of July, 2012, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, a copy of which is attached hereto and incorporated herein by reference.

Colleen M. Dale