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February 14, 2011

W.R. England II
Brydon, Swearengen & England
312 East Capitol Ave
P.O. Box 456
Jefferson City, Missouri 65102-0456

RE: Your letter dated February 9, 2011

Dear Mr. England:

I received your letter dated February 9, 2011. This is our response.

Your letter reflects a misunderstanding of both § 252 of the federal Act and the FCC's rules. Section 252(a)(1) does not contemplate that an ILEC will or can be a requesting carrier. Nor does any other part of § 252 or even § 251. ILECs cannot initiate the § 252 process. For that reason Halo does not have any duty to begin negotiations if and to the extent your clients are relying solely on § 252. Similarly § 332(c)(1)(B) does not contemplate that an ILEC can request interconnection with a CMRS provider. For that reason Halo does not have any duty to begin negotiations if and to the extent your clients are relying on § 332(c)(1)(B).

Even though Halo has no duty if and to the extent your clients are relying on §§ 251, 252 or 332(c)(1)(b) we are willing to negotiate with them. But any such negotiations will **not** occur in the context of § 252, and those processes will not apply. Nor will either party have recourse to the state commission if no agreement can be reached through negotiations.

Your letter says that your clients are attempting to implement rights given to ILECs in the FCC's 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). That FCC decision resulted in promulgation of an amendment to 47 C.F.R. § 20.11 by adding subsection (e), and that is the only source of any authority for an ILEC to demand negotiations with CMRS providers. If the ILEC properly implements § 20.11(e) then the ILEC can "invoke the negotiation and arbitration procedures contained in section 252 of the Act." If the ILEC properly invokes § 20.11(e) then the CMRS provider has the duty to negotiate in good faith. If the ILEC requests, the CMRS provider must "submit to arbitration by the state commission."

It appears, however, that you have not actually read that rule. For your convenience I set it out in full:

(e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission.

Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 of this chapter shall apply.

The rule is straightforward. It has three parts and each part must be expressly invoked before there is any duty imposed on the CMRS provider. In order to properly invoke § 20.11(e) the ILEC must “request interconnection.” You have now written us twice, and even after I advised you in my January 24, 2011 letter that you did not “request interconnection” you still failed to do so. You have not requested interconnection, and that is a prerequisite to proper invocation of § 20.11(e). Further, you must also “invoke the negotiation and arbitration procedures contained in section 252.” Your first letter did not mention § 252; it referenced § 251. Your recent letter refers in one place to § 251, but finally does contain a citation to § 252. I will therefore acknowledge that you have now done one of the two things the rule requires an ILEC to do before the CMRS provider has the duty to negotiate. When and if your clients “request interconnection” you will have finally done what the rule requires to at least partially invoke § 20.11(e).

There is a separate and independent third part, however, which your letters also have not done even though my response to you mentioned it as well. Under the rule the ILEC must expressly request the CMRS provider to submit to state-level arbitration. When the request is made the CMRS provider must so submit. But submission is not an automatic thing. There must be a request, and to date your clients have not made that request.

I will summarize: when your clients “request interconnection” with Halo you will have finally done what the first sentence in 20.11(e) requires. When your client actually requests that Halo submit to state-level arbitration then we will. Your communications have not done either of these things. Therefore no clock is ticking and if you were to file an arbitration at the state commission without requesting that Halo submit then the state commission will not have jurisdiction.

If and when you comply with the rule’s requirements, the clock will begin. Section 252(a)(1) allows the two carriers to “negotiate and enter into a binding agreement ... without regard to the standards set forth in subsections (b) and (c) of section 251.” The provision is voluntary, however. Our present intent is to not voluntarily negotiate outside of subsections (b) or (c). Rather, we will insist on complete adherence to the standards for both, and nothing in this letter or my January 24, 2011 letter should be taken as any indication of a willingness to stray outside those boundaries. The only matters we will negotiate, and therefore the only “open issues” there might ever be for a state commission to arbitrate, will be implementation of your clients’ duties under subsections (b) **and** (c).¹ An ILEC is “clearly free to refuse to negotiate any issues other than those it has a duty to negotiate under the Act,” *See CoServ, LLC v. Southwestern Bell*, 350 F.3d 482, 488 (5th Cir., 2003). Certainly a non-LEC CMRS carrier is equally free to refuse to negotiate any issue other than implementation of the ILEC’s subsection (b) and (c) duties and § 20.11(e) does not purport to require that the CMRS provider do more than the ILEC receiving a § 252 request must do.

Therefore, if your clients choose to fully invoke § 20.11(e) and finally do the things the rule says must be done, the resulting negotiations will not involve § 251(a), or any other matter. We will enter good faith negotiations to implement your clients’ duties under § 251(b)(1) – (5). Since your clients will have “requested interconnection” and since your clients will have been the ones that invoked § 252 processes they will have necessarily waived any § 251(f) exemption. We will engage in good faith negotiations to implement your clients new-found § 251(c)(2)-(6) duties. Section 252 is exclusively devoted to those subsections, and does not even mention §

¹ Halo is not an LEC and does not have any duties under either of those subsections.

251(a), so that will not be a part of the negotiations. We will insist on strict adherence to the standards for § 251(b) and (c) set out in § 252(d) and then of course the FCC's Part 51 rules.

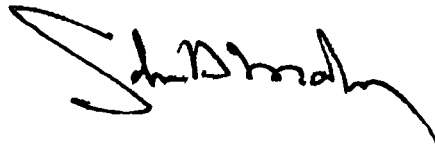
Further, as I indicated to you in my January 24, 2011 letter, Halo will seek direct interconnection and we will propose to use IP-based interconnection rather than the more traditional circuit-switched interfaces and signaling. I will not repeat the list of information requests we will have, but we will seek that information.

The "simple" answer to your "simple" question is yes. Halo will negotiate. I advised you that we were prepared to do so in my January 24 letter. But in case it was not sufficiently clear I will say it again. We will negotiate under § 251(a), but will not do so in the § 252 context. If your clients ever do what § 20.11(e) requires then the clock will start and we will comply with that rule. Then, however, we will be operating in the § 252 context and any negotiations (and therefore the open issues) will be purely limited to implementing your clients' duties under § 251(b) and (c), by applying the standards set out in § 252(d) and following the FCC's Part 51 rules.

The choice is yours.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marks", with a stylized flourish at the end.

John Marks
General Counsel
jmarks@halowireless.com