



3437 W. 7th Street, Suite 127, Fort Worth, TX 76107

February 23, 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 17, 2011 and styled "Request for Interconnection & Compensation Arrangements"

Dear Mr. England:

Halo acknowledges receipt of correspondence from you on behalf of a host of entities that claim to be LECs dated December 30, 2010, January 26, 2011, January 27, 2010, and February 17, 2011. Your letters contain a series of assertions that I would like to address individually. The first relates to our willingness to negotiate interconnection arrangements in good faith.

You continue to misrepresent our responses and our willingness to negotiate. I have advised you on several occasions that Halo stands ready, willing and able to negotiate with any and all carriers under the Act, and will gladly work with your clients to obtain a written agreement under the Act, depending on the status of the carrier and the process that is invoked. You clients have two options.

§ 251(a) option: Halo will negotiate with any of your LEC clients under § 251(a). Nothing special is required for this, other than for you to advise that is the option your clients choose to exercise. However, § 251(a) negotiations will not use the negotiation and arbitration procedures in § 252 because that is not how § 251(a) is implemented.¹

¹ See *Core Communications, Inc. v. SBC Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 8447, ¶ 18 (2004) ("Neither the general interconnection obligation of section 251(a) nor the interconnection obligation arising under section 332 is implemented through the negotiation and arbitration scheme of section 252."); *Qwest Corp., Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 5169, ¶ 23 (2004) (defining the term "interconnection agreement" for purposes of section 252, as limited that term to those "agreement[s] relating to the duties outlined in sections 251(b) and (c)"); see also, e.g., *Qwest Corp. v. Public Utils. Comm'n of Colo.*, 479 F.3d

Or,

§ 252 option Halo will negotiate under § 252 when it applies. To make it apply your ILEC² clients must properly invoke FCC Rule 20.11(e). Your letters have not properly invoked FCC Rule 20.11(e), and contain material defects.

§ 252 option Proper invocation of the § 252 option. The option given to ILECs under FCC Rule 20.11(e) is there to be used. But the ILEC must properly and completely do what the rule says must be done. Again, as I've said before, there are three separate and individually required parts:

Part 1: The ILEC must "request interconnection." To date none of your letters have ever come close to "requesting interconnection." Your letters say your clients want "an agreement" and seek "negotiations" but none expressly request "interconnection." This is mandatory and Halo will not waive this point.

Part 2: The ILEC must invoke "the negotiation and arbitration procedures contained in section 252 of the Act." I agree that your letters have *tried* to do this, and your latest letter probably suffices. But your recent relative success on the second prong does not relieve you of having to meet the first. Section 20.11 could not be clearer. It says that if BOTH steps are taken the CMRS provider "**receiving a request for interconnection** must negotiate in good faith." We will continue to stand patiently by until your clients send us a "request for interconnection." This is not just semantic incantations. As a lawyer, I am sure you understand the need to set out and meet each element of a cause of action.

Part 3: The ILEC must expressly request the CMRS provider to "submit to arbitration by the state commission." Your letters have never done that, even though I have now advised you on more than one occasion that this is required and still lacking. The state commission will not have jurisdiction over this matter or Halo unless and until Halo submits, and Halo is not required to submit until your ILEC clients make the request. The state commission is not the one that must or even can make this request and no state commission can trivially dispose of this jurisdictional prerequisite. Until each of your ILEC clients makes the formal request Halo has no duty to submit and we will not. If and when your clients request that Halo submit to the state commission's jurisdiction, then we will.

§ 252 option Your clients are the ones seeking to change the *status quo*. If they want to receive the benefits of the FCC rule they too have to follow the rule. We have

1184, 1197 (10th Cir. 2007) ("[T]he interconnection agreements that result from arbitration necessarily include only the issues mandated by § 251(b) and (c).").

² Only ILECs may benefit from FCC Rule 20.11(e). Some of the entities listed in your February 17 letter, however, do not appear to be ILECs. For example, the letter lists "Fidelity Communications Services I," "Fidelity Communications Services II" and "Mark Twain Communications Company." We reviewed the FCC's web site at <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>, and those three hold out as "CAP/LEC" rather than "ILEC." If and when you submit any correspondence that attempts to invoke Rule 20.11(e) then please provide some evidence tending to show that every client of yours on whose behalf the notice is sent is an ILEC.

gone out of our way to advise you of the defects in your prior attempts, but we will not relieve you of your burden to comply with the rule's requirements. If and when any of your ILEC clients properly invoke FCC Rule 20.11(e), then we will comply with the rule and use the § 252 negotiations and arbitration process.

§ 252 option Any § 252 negotiations will be strictly limited to implementing your ILEC clients' § 251(b) and (c) duties, and only these duties. Halo has not agreed, and will not agree, to address anything other than your ILEC clients' § 251(b) and (c) duties if § 252 procedures are ever used. Despite your continued efforts to create additional open issues "without regard to the standards set forth in subsections (b) and (c) of section 251" we do not agree to broaden the open issues. Halo has the same right as the ILECs³ to refuse to broaden the issues beyond § 251(b) and (c).²

There are a series of other claims in your February 17 letter that I would like to correct. You state that "Halo is sending traffic to AT&T tandems in Missouri over the LEC-to-LEC (or Feature Group C) network for ultimate termination to customers served by these LECs." You further claim that "Halo has no agreement with any of these LECs to terminate this traffic." Finally, you characterize Halo's traffic in a way we do not agree is proper when you claim your clients seek agreements "to establish appropriate interconnection agreements (including reciprocal compensation) for the local (i.e., intraMTA) wireless traffic that Halo Wireless is terminating to them."

With regard to your first contention, Halo is not sending traffic to AT&T tandems in Missouri "over the LEC-to-LEC (or Feature Group C) network." Halo is delivering traffic to AT&T via Type 2 interfaces. These interfaces are not "Feature Group C" interfaces and the exchange between Halo and AT&T are not occurring over any "LEC-to-LEC" or "Feature Group C" network." We have no knowledge or control over what AT&T does with the traffic after we hand it off to them. But as between Halo and AT&T, none of this is "LEC-to-LEC" or "Feature Group C."

Second, while it is true there is no written interconnection agreement in place, there is an arrangement: bill and keep. As long as bill and keep is in place, then no compensation is due from either party. Thus, your clients cannot claim they are not being paid amounts they are properly owed, for nothing is owed. If your clients want to change the *status quo*, then they must do what the law requires them to do to change the *status quo*. I have now told you at least three times how to do that.

Third, I reject use of the word "local" to describe any of the telecommunications at issue. "Local" is not a statutorily defined term and has nothing to do with LEC-CMRS traffic. The traffic Halo originates with your clients is all IntraMTA.

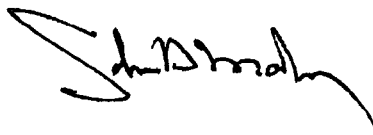
Fourth, Halo is not "terminating" traffic to any of your clients. Halo is originating traffic. Your clients transport and terminate that traffic.

Mr. England, we stand ready, willing and able to begin good faith negotiations with your clients once they have properly followed FCC rules and process. Please advise me when you are available for § 251(a) negotiations and we will line up Halo counsel and business representatives accordingly. If your ILEC clients want to try again to require the use of § 252 negotiation and

³ See *CoServ, LLC v. Southwestern Bell*, 350 F.3d 482, 488 (5th Cir., 2003).

arbitration procedures they are free to do so and we will comply with FCC Rule 20.11(e) once it has been properly invoked.

Sincerely,

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

John Marks
General Counsel
jmarks@halowireless.com