Halo wireless

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

January 24, 2011

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

RE: Citizens Telephone Company and Green Hills Telephone Company / Halo Wireless, Inc.

Dear Mr. England:

This letter responds to your letter of December 30, 2010 to Halo Wireless, Inc. ("Halo") and addressed to me concerning Citizens Telephone Company ("Citizens") and Green Hills Telephone Company ("Green Hills"). I am sorry for the 25-day delay. The correspondence came in the middle of the holidays and did not receive immediate attention as a result. I was heavily engaged in other matters and have simply fallen behind on some matters, including this one.

Your letter asserts many things, and I will not address all of them. If I fail to expressly respond to an assertion of fact or law then please do not conclude I am concurring with your position; indeed, the converse is more likely to be the case. I will, however, address the four major issues that are raised by your December 30 letter: (1) whether Halo's traffic is "interMTA"; (2) the assertion Halo's traffic is "wireline" and "interLATA"; (3) the applicability of Missouri PSC rules; and, (4) the "request that Halo Wireless begin negotiations, pursuant to Section 251 of the Telecommunications Act, to establish appropriate interconnection arrangements (including reciprocal compensation) for the intraMTA wireless traffic that Halo is terminating[1] to Citizens and Green Hills."

Halo's CMRS traffic is 100% intraMTA. You for some reason take issue with the statement in the letter I sent you on December 22, 2010 that all of our outbound traffic is intraMTA. I obviously do not know what your switch records may say, but I will reiterate that 100% of our traffic is intraMTA. If your clients are basing their contention based on a comparison of calling and called numbers that is not how CMRS calls are rated. Our network is designed so that every call is associated with a customer unit that communicates with a transmitter site that is in the same MTA as the called party. That is the test for whether a call is intraMTA. All of the Halo traffic your clients have transported and terminated, and all of the traffic your users may have addressed to a Halo number, is intraMTA.

Halo's traffic is CMRS and thus is not "wireline." Your clients are not RBOCs. "LATA" rules do not apply. I do not know the basis for any assertion that the call is "wireline" or even

[1] I am somewhat confused by the characterization of Halo "terminating" traffic to your clients. Halo is not "terminating" traffic "to" your clients. Halo is originating traffic that is delivered to your clients through AT&T's tandem, and then your clients are "transporting and terminating" the calls. When a user of one of your clients dials a Halo number then your clients are originating traffic that is transited by AT&T and handed off to Halo for transport and termination. If your clients' user is required to dial 1+ to make a call addressed to Halo's user then the call may be handled by the user's IXC, but the call will still be intraMTA and thus subject to reciprocal compensation. This letter will use the correct terminology.

understand why you would make this claim. Halo is a CMRS provider and our traffic is CMRS. The "wireless" rules apply. Your clients are not legally inhibited by LATA boundaries, and neither is Halo. LATA boundaries are wholly irrelevant except to the extent they may impose some practical issues when an RBOC's network is involved.

Missouri PSC Rules do not apply but FCC rules do. Another reason for the delay in my response was that the Missouri PSC rules you cited had to be reviewed in an attempt to understand how a state commission's rules might possibly apply in this context. They do not, as a matter of law, given the specific situation at hand. Your clients are in the Kansas City MTA. Halo has a single transmitter for this MTA, and it is located in Junction City, Kansas. Therefore, even though all of the communications are intraMTA they are *also* interstate. Consequently, the Missouri PSC does not have any jurisdiction over Halo or the communications in issue and its rules cannot apply. Under Missouri law CMRS service is excluded from the definition of "telecommunications service" and a CMRS carrier therefore cannot be a "telecommunications company." *See*, section 386.020(52) and (54)(c). The state commission's rules simply cannot apply in this context.

We are certain that your clients will not take precipitous action, particularly since we have now replied to your December 30 letter. I will not tarry long on the topic of call blocking.[2] This is all interstate traffic and no state rules can apply. FCC regulations will apply to the extent there is truly a desire to block calls. If your clients and any other carrier working in concert with them want for some reason to block all concerned must comply with § 214(a) and (b) along with applicable FCC rules. The call blocking you describe fits the definition of "discontinuance, reduction, or impairment of service" in 47 C.F.R. § 63.60(b)(5) and requires a formal application under 63.62(b). There are other applicable requirements as well but I will not list them here.

Your clients are currently being compensated through a "bill and keep" arrangement. I must address an unstated premise in your letter. Your clients seem to think there is not a compensation mechanism in place for transport and termination. This is not correct. The FCC has made clear that in the absence of an agreement the compensation method for traffic subject to § 251(b)(5) is bill and keep. Neither side pays the other for transport and termination. That default method stays in place unless and until there is a contract that provides for some other compensation scheme.

Your request for negotiations. It is apparent that your clients and you both in fact recognize the current default bill and keep compensation mechanism and fully understand that this default can only be changed through a contract that implements some other mechanism, because your letter asks that the parties negotiate to achieve a contract. But we do not know what your clients have in mind in terms of the various governing principles and procedures for obtaining a contract and your letter does not squarely fit how any of available vehicles work. The letter mentions "section 251" but there are multiple parts of § 251 that might apply and each has much different procedures and rules. Similarly, given that Halo is a CMRS provider there are also the independent substantive and procedural methods arising under § 332(c)(1)(B), which essentially applies § 201 and is enforced through § 208. Our problem is that your letter is wholly unclear as to which of the available mechanisms and processes you truly desire to use, and we believe your clients may misapprehend the substance and process that flows from each of them.

Halo is willing to discuss interconnection using § 251(a) as the vehicle. If your clients wish to supply a contract you have successfully negotiated using that approach we will review it and provide our thoughts. Section 251(a) is not implemented, however, through the negotiation and arbitration procedures in § 252. Nor is § 332(c)(1)(B). The FCC recognized the distinct

[2] Your letter mentions blocking as part of the allegations concerning "interLATA wireline" traffic. I have already explained there is no such traffic.

processes a few years ago in the *Order on Reconsideration, In the Matter of CoreComm Communications, Inc., and Z-Tel Communications, Inc. v. SBC Communications Inc., et al*, File No. EB-01-MD-017, FCC 04-106, ¶ 18 and note 44, 19 FCC Rcd 8447 (rel. May 2004):

> 18. 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.[note 44]
>
> [Note 44] Section 251(c) obligates incumbent LECs "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection [*i.e.*, subsection (c)]." 47 U.S.C. § 251(c)(1). It does not require such negotiation with respect to section 251(a). Similarly, section 252(a)(1), 47 U.S.C. § 252(a)(1), permits ILECs to negotiate agreements "without regard to the standards set forth in subsections (b) and (c) of section 251," but does not mention subsection 251(a). Section 332(c)(1)(B) requires interconnection when the Commission finds such action necessary or desirable in the public interest. *See* 47 U.S.C. § 332(c)(1)(B) (providing that, upon reasonable request of a CMRS provider, the Commission shall order interconnection pursuant to section 201.). There is, again, no mention of the section 251/252 negotiation process.

Your letter also mentions "reciprocal compensation" – which is governed by § 251(b)(5). That section applies only to LECs and Halo is not an LEC and thus Halo is not directly covered by that provision although we have the right to choose to invoke §§ 251 and 252, become a requesting carrier and then require an ILEC to comply with whatever §§ 251/252 duties the ILEC may have.[3] The FCC, however, has exercised its powers under § 332(c)(1)(B) (which in turn relies on and applies § 201) to require that CMRS providers and LECs "shall comply with principles of mutual compensation." LECs "shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier" and CMRS providers "shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider." According to the FCC, LECs and CMRS providers "shall also comply with applicable provisions of part 51 of [47 C.F.R.]. *See* 47 C.F.R. § 20.11(b) and (c). This means that the FCC has exercised its § 332 powers to apply the same compensation principles for CMRS-LEC traffic that applies to LEC-LEC traffic under § 251(b)(5).[4] If your clients wish to negotiate terms in the context of § 332(c)(1)(B) of the Act (again, applying § 201) and follow these parts of the rule, then Halo will do so. Should the parties not reach a voluntary agreement, then any disputes will and must be resolved by the filing of a complaint at the FCC under § 208 of the Communications Act. *See* 47 C.F.R. § 20.11(a).

---

[3] *See Local Competition Order* ¶ 1008. Although your clients have § 251(b)(5) duties they are exempt from the § 251(c)(1) duty to negotiate in good faith to implement that duty on account of § 251(f). And for so long as your clients are exempt they cannot be subjected to a § 252 arbitration. One cannot fairly assert that an RLEC is immune from § 251(c) duties and from a § 252 arbitration because of the § 251(f) rural exemption but it can compel a competing carrier to state level arbitration under § 252 and still maintain the rural exemption.

[4] This result does not mean that CMRS providers directly have § 251(b)(5) obligations. The FCC requires LECs to enter § 251(b)(5) arrangements with a CMRS provider that invokes § 252 and becomes a "requesting carrier" under § 252. Section 251(b)(5) does not otherwise directly bind CMRS providers since they are not LECs. CMRS and LECs, however, have had "mutual compensation" obligations since at least 1994. In the *Local Competition Order* the FCC exercised its separate and independent § 332 powers to impose § 251(b)(5)-like duties on CMRS in § 20.11 by incorporating part 51 rules through 20.11(c). In 2005 as part of its *T-Mobile* decision the FCC again used its § 332 powers to require CMRS providers to use § 252 procedures and to submit to state arbitration upon proper request by an ILEC by promulgating the amendment to the rules codified in § 20.11(e).

The FCC a few years ago gave ILECs the additional option of invoking "the negotiation and arbitration procedures contained in section 252 of the Act." *See* 47 C.F.R. § 20.11(e). When an ILEC does what is required by the rule to exercise this option the CMRS provider "receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission." You could not have intended to use this procedure. The letter mentions only § 251, and does not invoke § 252 arbitration procedures. Nor does it request that Halo "submit to arbitration by the state commission." If I am incorrect in this regard, please send Halo a request that actually complies with the rule.

Should your clients choose this route[5] Halo would, of course, then follow the procedures in § 252 and the parties would have a 135 day window for negotiations. During those negotiations, our starting point would naturally be for full and complete implementation of §§ 251(b)(5), including the cost standards in § 252(d).[6] Halo will desire direct interconnection and will apply § 251(c)(2) as well as, again, § 252(d)(1). Halo's wireless network is 4G and we use Wi-Max, so we will be seeking IP-based interconnection rather than the more traditional circuit-switched interfaces and signaling. Transport and termination pricing will follow § 252(d)(2). We will also be interested in *inter alia*, resale (§ 251(c)(4)), collocation (§ 251(c)(6)), and structure access terms (§ 251(b)(4), invoking and applying § 224), and we will insist on faithful application of all the standards established in § 252 along with the FCC's implementing rules.

In order to reasonably assess any § 252 interconnection terms you may propose if you choose to proceed in that context we will request that your clients provide cost studies using TELRIC principles that support all of their proposed pricing for interconnection, traffic exchange, and collocation. We will seek studies reflecting your clients' claimed avoided cost for resale purposes. We will request the studies that will support your clients' proposed prices and terms for access to poles, conduits and rights of way. If your clients decide to operate in the context of a § 252 negotiation then 47 C.F.R. § 51.031 applies and Halo will request the costing information identified above and your clients must provide it under 51.301(c)(8)(i) and (ii).

Although Halo reserves all of its rights, including perhaps at some point taking recourse to § 252(i) or even becoming a requesting carrier, we are presently satisfied with the default bill and keep arrangement. Apparently, your clients are not. Halo will of course comply with federal law and therefore we will discuss § 251(a) interconnection terms, we will proceed under the FCC process[7] that applied prior to the amendment to 47 C.F.R. § 20.11 that gave ILECs the option of proceeding under § 252, or – if you choose to waive any § 251(f) exemptions and request use of § 252 procedures and file a compliant request that properly invokes it – we will follow § 20.11(e). But at this point we cannot discern which of the alternatives you prefer.

[5] Lest there be any confusion, Halo has not invoked § 252 and is not a "requesting carrier" at this time. Nor is Halo in any way making a *bona fide* request under § 251(f)(1)(B). Your clients are the ones attempting in some as-yet unknown fashion to change the *status quo* arrangements and mechanisms in place.

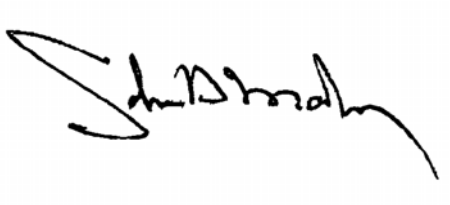
[6] By choosing to use § 252 processes your clients would necessarily be embracing § 251(c) since § 252 is entirely dedicated to implementation of § 251(b) and (c) and it cannot be used for solely § 251(a) interconnection related negotiations. Therefore any decision to take the option in 47 C.F.R. § 20.11(e) and invoke § 252 procedures would have to mean your clients are waiving any exemptions they may have under § 251(f).

[7] States have traditionally retained some jurisdiction to initially set CMRS-LEC compensation rates for intrastate traffic, as the FCC recently observed in *North County*. In our case, however, there is no intrastate traffic. It is all interstate. Thus the only option would be a complaint under § 208 and then the FCC would directly apply its § 201/332 jurisdiction.

I look forward to your response that more clearly states precisely what it is your clients seek. Please let me know if you have any questions.

Thank you.

Sincerely,



John Marks
General Counsel
jmarks@halowireless.com