BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

CRAW-KAN TELEPHONE COOPERATIVE ET AL.'S STATEMENT OF POSITIONS

COME NOW Respondents 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, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, and Peace Valley Telephone Company, Inc. (hereinafter "Craw-Kan et al." or "Respondents"), and for their Statement of Positions as set forth in the Issues List filed by Staff on June 21, 2012, state to the Missouri Public Service Commission (Commission or PSC) as follows:

I. INTRODUCTION

Respondents, Craw-Kan et al., are small local exchange telephone companies that provide service in remote, rural parts of Missouri. Respondents' service areas are characterized by high costs and low customer density. As a result, Craw-Kan et al. rely to a significant degree on compensation from other carriers ("intercarrier compensation"), such as access compensation (from

wireline carriers) and reciprocal compensation (from wireless carriers), to help pay for their networks and provide service to rural Missouri. Halo Wireless, Inc. is engaged in a multi-state access rate avoidance scheme devised to deliver traffic to rural exchanges, such as Respondents', and use their telecommunications facilities and services to complete (i.e. "terminate") calls without payment.

II. ISSUES AND POSITIONS

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?

Craw-Kan et al. Position: Yes. Transcom Enhanced Services, Inc. ("Transcom") is routing large volumes of originating wireline and inter-MTA wireless voice calls to its affiliate, Halo Wireless, Inc. (Halo). Halo then delivers those wireline and inter-MTA wireless calls to Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T") for completion (i.e. "termination") to the rural customers of Craw-Kan et al. Although these voice calls employ the facilities and services of Craw-Kan et al., Halo has refused to compensate Craw-Kan et al. for these calls even though Halo has been billed at Respondents' lowest reciprocal compensation rates. The Missouri Enhanced Record Exchange (ERE) Rule was designed and established to address such unlawful situations. In fact, the Commission's ERE Rule's *Order of Rulemaking* expressly states:

> **[T]he Enhanced Record Exchange Rules do not regulate wireless carriers, as the Joint Wireless Carriers and Sprint suppose. Rather, what the rules would regulate is use of the LEC-to-LEC network—not the wireless carriers. We find that section 386.320.1, in particular, places an obligation upon the commission to assure that all calls, including calls generated by nonregulated entities, are adequately**

recorded, billed, and paid for. We reject Joint Wireless Carriers' apparent contention that nonregulated carriers may use the Missouri LEC-to-LEC network without regard to service quality, billing standards, and, in some instances, with an apparent disregard for adequate compensation. We find this particularly so in the case of transiting traffic because terminating carriers often have little or no knowledge of those carriers placing traffic on the network. Given that terminating carriers are left to bear one hundred percent (100%) of the liability in such situations, we find that minimally invasive rules are necessary to reduce such instances as far as practical.

Joint Wireless Carriers also rely on 47 U.S.C. Section 251 as prohibiting the commission's authority over the transiting traffic generated by wireless carriers. Joint Wireless Carriers specifically cite Sections (a) and (b)(5). We acknowledge the prerogative of wireless carriers to connect to the LEC-to-LEC network with reciprocal compensation agreements based upon the most efficient technological and economic choices. And we acknowledge that wireless carriers may sign, and submit to the commission for approval, agreements to interconnect directly or indirectly with landline carriers. Indeed, we encourage all carriers to sign agreements and submit them to the commission for approval pursuant to federal and state law. However, **the record before us is one of far less than complete agreements, signed or otherwise. We are not convinced that one carrier's most technological and efficient interconnection should extend to another carrier's financial loss without an agreement. Moreover, we would note another aspect of Section 251 not cited by Joint Wireless Carriers. Section (d)(3) preserves a state's interconnection regulations. Specifically, this section holds that the FCC may not preclude the enforcement of any regulation, order, or policy of a state commission that establishes access and interconnection obligations of local exchange carriers. We find that the obligation we are imposing on incumbent local exchange carriers is a necessary interconnection obligation on incumbent carriers**. Moreover, we can see nothing in our rules that prevents interconnection in the most efficient technological and economic manner, nor do we find anything in our modified rules that is otherwise inconsistent with federal law.

We also note Joint Wireless Carriers' reliance on 47 U.S.C Section 152(b) as giving the FCC authority over intrastate wireless service and Sections 332(c)(3) and 253(a) as preempting state regulation of wireless entry. We note Joint Wireless Carriers' comment that all wireless traffic is interstate, because it is impossible or impractical to determine the end points of wireless calls. Moreover, Joint Wireless Carriers hold that "entry" prohibitions extend to "any" regulation — regardless of whether it prohibits market entry. As we have previously stated, we anticipate that removal of

certain proposed rules will lessen concern on the part of wireless carriers. But while we acknowledge federal preemption in the area of wireless services, **we do not believe our rules conflict with federal law, because they have nothing to do with the relationship between a wireless carrier and its customers. Rather, our proposed rules have only to do with the terms and conditions that may be required by those who provide services *to a wireless carrier*, and in particular, transiting service. Our rules are not targeted to the practices of wireless carriers; rather, our rules are targeted to the practices of regulated local exchange carriers and the network employed by them—a matter that *is* under the jurisdiction of this commission. In particular, our proposed rules address use of the LEC-to-LEC network, especially that traffic which is transited to terminating carriers who are not a party to agreements made between originating carriers (including but not limited to wireless carriers) and transiting carriers**.

Missouri Register, Vol. 30, No. 12, *Order of Rulemaking*, June 15, 2005, p. 1377 (emphasis added).

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

Craw-Kan et al. Position: Yes. The testimony of AT&T Missouri and Craw-Kan et al. establish that Halo has placed interLATA wireline telecommunications traffic on the LEC-to-LEC network.

The FCC's November 18, 2011 *USF/ICC Transformation Order*[1] expressly rejected Halo's argument that the insertion of Halo into the call path converts what are otherwise wireline calls into wireless calls. Specifically, the rejected Halo's arguments and found that Halo's scheme did not convert landline calls into something else. Specifically, the FCC held, "**[T]he 're-origination' of a call over a wireless link in the middle of a call path does not convert a wireline-**

[1] WC Docket No. 10-90 et al. released Nov. 18, 2011.

originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position."[2] Rather, the FCC clarified that the originating caller remains the appropriate reference point for purposes of intercarrier compensation.

Similarly, state public utility commissions such as the Tennessee Regulatory Authority and the Pennsylvania Public Utility Commission have rejected Halo's fallback argument that its affiliate, Transcom, is an Enhanced Service Provider (ESP).

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?

Craw-Kan et al. Position: No. Halo has paid nothing to Craw-Kan et al. for Halo's use of Craw-Kan et al.'s rural facilities. Craw-Kan et al. have issued bills to Halo based on their intraMTA wireless rates (as set by the Missouri Commission) or interim compensation rates (as set by the FCC) but Halo has refused to pay. Craw-Kan et al. have requested to enter into negotiations with Halo towards reciprocal compensation agreements in accordance with the Telecommunications Act of 1996 but, to date, Halo has refused to negotiate in good faith.

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

Craw-Kan et al. Position: No. The ERE Rule defines "Originating Caller Identification" as "the ten (10)-digit telephone number of the caller who originates

[2] *Id.* at ¶1006 (emphasis added).

the telecommunication that is placed on the LEC-to-LEC network. This feature is also known as caller ID (CID), calling number delivery (CND), calling party number (CPN), and automatic number identification (ANI)." 4 CSR 240-29.010(28). Halo has admitted that until December 29, 2011, it was not providing that information. Craw-Kan et al. have not been able to determine whether Halo is delivering the appropriate originating caller identification because they cannot identify Halo traffic from other traffic delivered by AT&T over the LEC-to-LEC network.

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

Craw-Kan et al. Position: Yes. Blocking or disconnection from the network is the appropriate remedy under the ERE Rule (as well as longstanding legal precedent) for customers, including other carriers, that do not pay their bills.

The right to block calls or disconnect service for failure to comply with Commission-approved tariffs has been consistently upheld by the Missouri Court of Appeals. *See e.g. State ex rel. Tel-Central of Jefferson City, Inc. v. Public Service Comm'n*, 806 S.W.3d 432, 435 (Mo. App. 1991)("To hold otherwise would mean that a telephone company would be required to serve every customer so long as service was requested whether the customer paid the bill or not."); *Sprint Spectrum v. Missouri PSC*, 112 S.W.3d 20, 26 (Mo. App. 2003)("We disagree that the Act prohibits blocking the traffic of a carrier in default of applicable tariff provisions, such as failing to pay approved rates. . . . It is well

established that telephone companies may discontinue service to a customer in default of a tariff, as long as proper notice is given.").

The FCC has explained, "**the law is clear on the right of a carrier to collect its tariffed charges, even when those charges may be in dispute between the parties**." *In the Matter of Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone Company of Missouri*, File No. E-87-59, *Memorandum Opinion and Order*, 4 FCC Rcd 8338, rel. Nov. 29, 1989, ¶9 (emphasis added). This FCC decision was affirmed by the U.S. Court of Appeals for the D.C. Circuit in *Tel-Central of Jefferson City, Missouri, Inc. v. FCC*, 920 F.2d 1039 (D.C. Cir. 1990)(concluding that United Telephone Company "was **authorized to disconnect Tel-Central's lines for nonpayment of charges**.")(emphasis added).

Last year, the FCC declined Halo's request to prohibit call blocking under the Missouri ERE Rule when numerous other small Missouri rural carriers used the ERE Rule blocking procedures. As a result, many of Missouri's other small companies blocked Halo's traffic prior to Halo's August 2011 bankruptcy filing, and Halo's traffic remains blocked to those companies.

Finally, the Tennessee Regulatory Authority has issued similar relief (authority to stop accepting traffic from Halo) in Tennessee.[3]

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[3] *In re: BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119, *Order*, issued Jan. 26, 2012; *In re: Complaint of Concord Telephone Exchange, Inc. et al. against Halo Wireless, Inc., Transcom Enhanced Services, Inc., and Other Affiliates for Failure to Pay Terminating Intrastate Access Charges for Traffic and Other Relief and Authority to Cease Termination of Traffic,* Docket No. 11-00108, *Order*, issued April 18, 2012.

B. AT&T Counterclaim – 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?**

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?**

Craw-Kan et al. Position: Craw-Kan et al. generally support AT&T's positions on these issues. AT&T should be allowed to discontinue providing service to Halo under the Interconnection Agreement (ICA) due to Halo's breaches of that Agreement.

III. CONCLUSION

Respondents respectfully request that the Commission issue an order finding that: (1) Halo has unlawfully delivered wireline interexchange, inter-MTA wireless, and intra-MTA wireless traffic to Craw-Kan et al.'s rural exchanges without payment and in violation of the Missouri ERE rule and Craw-Kan et al.'s Commission-approved intrastate access tariffs, and (2) that Halo has breached its ICA with AT&T. Therefore, the Commission's order should conclude that: (1) the Commission's ERE Rules apply and blocking should be authorized immediately to put a stop to the uncompensated and unlawful use of Craw-Kan et al.'s facilities and services and Missouri's LEC-to-LEC network; and (2) AT&T should be authorized to discontinue performance under its ICA with Halo.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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