

RLEC STATEMENT NO. 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	:	
COMPLAINT OF	:	
CONCORD TELEPHONE EXCHANGE, INC.,	:	
HUMPHREYS COUNTY TELEPHONE	:	
COMPANY, TELLICO TELEPHONE	:	DOCKET NO. 11-00108
COMPANY, TENNESSEE TELEPHONE	:	
COMPANY, CROCKETT TELEPHONE	:	
COMPANY, INC., PEOPLES TELEPHONE	:	
COMPANY, WEST TENNESSEE	:	
TELEPHONE COMPANY, INC., NORTH	:	
CENTRAL TELEPHONE COOP., INC. AND	:	
HIGHLAND TELEPHONE COOPERATIVE,	:	
INC. AGAINST HALO WIRELESS,	:	
LLC, 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	:	

TESTIMONY OF THOMAS M. MCCABE

SUBMITTED: January 9, 2012

1 **Q. Please state your name, occupation and business address for the record.**

2 A. My name is Thomas M. McCabe. I hold the position of Manager-State
3 Government Affairs for TDS Telecom and am responsible for managing regulatory,
4 legislative and industry relations for TDS Telecom in the states of Tennessee, Florida
5 and Virginia. My business address is 107 West Franklin Street, Quincy, Florida 32351.

6
7 **Q. Please state your experience and education background.**

8 A. I have been employed by TDS Telecom for the past 16 years as Manager – State
9 Government Affairs. In this capacity I have advocated TDS Telecom’s public policy
10 positions before state commissions and legislatures on a wide range of
11 telecommunication subjects such as access reform, universal service, service standards,
12 rate setting, etc. Prior to joining TDS Telecom, I served nine years on the staff of the
13 Florida Public Service Commission (“FPSC”). During that time, I had an active role in
14 developing telecommunications policy for the FPSC. In addition to developing state
15 telecommunications policy, I represented the FPSC on the National Association of
16 Regulatory Utility Commissioners Staff Subcommittee on Communications, the Federal
17 Communications Commission (“FCC”) Federal/State Joint Board on Separations and
18 Settlements, and the Joint Conference on Open Network Architecture.

19
20 **Q. On whose behalf are you testifying?**

21 A. I am testifying on behalf of Concord Telephone Exchange, Inc., Humphreys
22 County Telephone Company, Tellico Telephone Company and Tennessee Telephone
23 Company (the “TDS Companies”); Peoples Telephone Company, West Tennessee

1 Telephone Company, Inc., and Crockett Telephone Company, Inc. (the "TEC
2 Companies"); Highland Telephone Cooperative, Inc.; and North Central Telephone
3 Coop., Inc. (all collectively referred to as the "Rural Telephone Companies" or the
4 "RLECs") Each of these companies is an incumbent local exchange carriers ("ILEC")
5 operating in the State of Tennessee. The TDS and TEC Companies operate pursuant to
6 the authority granted to them by the Tennessee Regulatory Authority ("TRA" or
7 "Authority").
8

9 **Q. What is the purpose of your testimony?**

10 A. The purpose of my testimony is to demonstrate that the traffic sent by Transcom
11 Enhanced Services, Inc. ("Transcom" or "Transcom Enhanced Services") via Halo
12 Wireless, LLC ("Halo") through the AT&T's¹ tandems in Tennessee and delivered to the
13 Rural Telephone Companies for termination is toll traffic and, for the intrastate portion,
14 subject to the lawful intrastate terminating switched access rates of the RLECs. My
15 testimony will show that this traffic falls under the jurisdiction of the TRA, and that the
16 Authority is not precluded from exercising its jurisdiction over the intercarrier
17 compensation arrangements involving intrastate toll traffic. Further, I will show that, as
18 to the traffic at issue in this proceeding, Halo and Transcom both are operating in the
19 State of Tennessee without a proper certificate from the Authority.

20 The Authority should find that Halo is liable for access charges, including
21 applicable late payment penalties, and is violating the laws of Tennessee by refusing to
22 pay such. The TRA should then certify this finding in an Order to the Bankruptcy Court
23 for execution. The Authority also should issue a cease and desist order against Transcom

¹ BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T").

1 and Halo from delivering intrastate traffic in the State of Tennessee until they obtain the
2 necessary certification from this Authority to provide such service.

3
4 **Q. Who are the RLECs?**

5 A. The Rural Telephone Companies own and operate local exchange companies in
6 rural Tennessee: serving approximately 116,000 access lines (customers). Each company
7 provides local exchange service and intrastate access service (switched access service).
8 The customer class of each company is predominantly residential customers. Each of the
9 companies has been designated an Eligible Telecommunications Carrier in its operating
10 area, and accordingly, each provides service throughout its service territory and is a
11 carrier of last resort for rural Tennessee.

12
13 **Q. Please explain the circumstances that led to the filing of this complaint.**

14 A. Halo obtained access and connectivity to AT&T and, hence, indirectly to the
15 RLECs, by adoption of an interconnection agreement between BellSouth and T-Mobile,
16 which adoption was approved by the TRA in Docket No. 10-00063 in an Order dated
17 June 21, 2010.

18 In December 2010, the Rural Telephone Companies began receiving voice traffic
19 from Halo for termination to their end user customers via the common trunk groups they

1 maintain with AT&T.² The RLECs began invoicing Halo for terminating access services
2 beginning in the March-April 2011 time frame.³

3 Halo responded to each RLEC's carrier access bills by submitting form dispute
4 letters stating: "Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio
5 Service (CMRS) provider. The charges reflected in your statement appear to relate to
6 transport and termination of intraMTA traffic. Such charges may not be assessed against
7 CMRS carriers absent a contract, and Halo is under no obligation to pay them. We
8 further observe that Halo has not ordered or received any interstate or intrastate access
9 services from your company that could possibly be chargeable to Halo, so we have no
10 obligation to pay them either."⁴ These disputes were denied by the RLECs, but Halo,
11 nevertheless, continued both to refuse to pay and to use the terminating access services of
12 the RLECs.⁵

² The TDS Companies receive toll traffic from the AT&T tandems in Knoxville, Nashville and Memphis over common trunk groups. The TEC Companies receive toll traffic from the AT&T tandems in Nashville and Memphis over common trunk groups. NCTC receives toll traffic from the AT&T tandem in Nashville over common trunk groups. HTC receives toll traffic from the AT&T tandem in Knoxville over common trunk groups.

³ On April 25, 2011 and May 16, 2011, TDS Telecom issued invoices to Halo Wireless for the intrastate switched access services provided to Halo Wireless for which payment was due within thirty (30) days. On May 10, 2011 and June 10, 2011, the TEC Companies issued invoices to Halo Wireless for the intrastate switched access services provided to Halo Wireless for which payment was due within thirty (30) days. NCTC began billing Halo Wireless on March 1, 2011 and April 1, 2011 for reciprocal compensation. Upon discovering the calls were not CMRS intraMTA, NCTC began billing for intrastate terminating traffic, effective with an April 20, 2011 CABS invoice. An additional invoice was issued on June 1, 2011 for access services. HTC first sent an invoice to Halo Wireless on May 1, which was due and payable by June 1, 2011.

⁴ On June 15, 2011, Halo Wireless sent a dispute letter to Concord. On June 17, 2011, Halo Wireless sent an identical letter to Tellico. Halo Wireless also disputed the invoices from Tennessee by letter dated June 23, 2011. On June 23, 2011, Halo Wireless also sent dispute letters to TEC - Friendship and TEC - Bradford. Halo Wireless has neither paid nor disputed the invoices from TEC - Erin. On April 14, 2011, NCTC received the same form dispute letter from Halo Wireless. HTC received the same form letter dated May 24, 2011 from Halo Wireless. RLEC Exhibit TMM-1.

⁵ On June 22, 2011, Concord, Tellico and Tennessee Telephone issued a letter denying Halo Wireless' billing dispute and demanding payment in full. On June 28, 2011, Peoples, Crockett and West Tennessee issued letters denying Halo Wireless' billing disputes and demanding payment in full as well as a general collection of past due accounts for TEC - Peoples. On June 28, 2011, NCTC issued a letter denying Halo Wireless' billing dispute and demanding payment in full. On June 24, 2011, HTC issued a demand letter also denying Halo Wireless' billing dispute and demanding payment in full. RLEC Exhibit TMM-2.

1 **Q. Do you agree that access charges do not apply to the traffic in question?**

2 A. No. The Rural Telephone Companies have properly billed Halo for the
3 termination of intrastate and interstate toll traffic and interMTA CMRS traffic. These
4 invoices are fully consistent with the rates contained in the TDS and TEC Companies
5 intrastate access tariffs, and, for all companies, are consistent with their approved
6 intrastate access charges.

7
8 **Q. What is the total that the RLECs have billed Halo to date for termination of traffic?**

9 A. The RLECs have billed, and Halo has used without paying, over \$1 million of
10 access services as of the end of 2011, an amount which grows by over \$100,000 per
11 month.

12
13 **Q. Why pursue action at this time?**

14 A. The unlawful avoidance of access charge payments commonly known as access
15 arbitrage is not new to TDS Telecom, the Tennessee Rural LECs, or the
16 telecommunications industry as a whole. We view the practice of access arbitrage as
17 nothing more than fraud. In order to protect our financial interest, bringing this issue to
18 the Authority's attention and seeking quick resolution was imperative. Prior experience
19 dealing with companies engaged in access arbitrage has shown that delaying action will
20 only lead to greater exploitation of our networks and services.

21 Unfortunately, those engaged in access arbitrage understand that delay is their
22 ally. This complaint was filed back on July 7, 2011 and a similar complaint was filed by
23 TDS Telecom before the Georgia Public Service Commission on June 14, 2011. Not

1 surprisingly, Halo filed for bankruptcy on the evening before the TDS Telecom
2 complaint was to be heard by Georgia Public Service Commission. The filing of
3 bankruptcy and subsequent legal filings to improperly remove the Tennessee complaint
4 as well as other complaints from the state regulatory commissions has allowed Halo and
5 Transcom to benefit by avoiding payment of lawfully billed access charges through this
6 delay, while continuing to send traffic to the RLECs without payment. Halo has
7 estimated that nationwide they are terminating approximately 500 million minutes per
8 month, of which they estimate 75% of the traffic terminates to AT&T and the remaining
9 25% to other local exchange carriers.⁶ The longer Halo can delay or even prevent
10 commissions from acting on these complaints, the greater the benefit to Halo and its
11 affiliate Transcom.

12
13 **Q. Has the FCC weighed in on the effects of access arbitrage?**

14 A. Yes. These access arbitrage schemes have not gone unnoticed by the FCC. On
15 November 18, 2011, the FCC issued its Report and Order and Further Notice of Proposed
16 Rulemaking (the "FCC Order"). In the words of FCC Commissioner Michael J. Copps,
17 the FCC Order

18 ... puts the brakes on the arbitrage and gamesmanship that have plagued
19 [Intercarrier Compensation] for years and that have diverted private
20 capital away from real investment in real networks. By some
21 estimates...*phantom traffic affects nearly one fifth of the traffic on*
22 *carriers' networks. Today, we say "no more."*⁷

⁶ *In Re: Halo Wireless, Inc.*, United States Bankruptcy Court for the Eastern District of Texas (Sherman Division), Case No. 11-42464 ("Halo Bankruptcy Proceeding"), Testimony of Russell Wiseman testimony dated December 5, 2011 ("December 5th Bankruptcy Testimony") at Volume 1 page 18 line 7-8 and page 33 lines 1-7)

⁷ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-

1
2 **Q. Can you quantify the benefit to Halo and Transcom associated with access**
3 **avoidance?**

4 A. Yes, generally in order of magnitude. The access avoidance benefit to these
5 companies is several million dollars per month. As indicated previously, Halo estimates
6 that it is terminating one half of a billion minutes a month of Transcom aggregated
7 traffic. AT&T has claimed that the monthly amount of access charges owed by Halo is in
8 excess of \$1.5 million per month.⁸ Given that Halo estimates 75% of the traffic
9 terminates to AT&T, the remaining 25% or 125 million minutes per month is terminating
10 to other LECs. Using a conservative composite access rate for rural rate-of-return
11 telephone companies of \$.03 per minute times 125 million minutes of terminating intra
12 and interstate toll traffic would be equal to 3.75 million per month in operating expenses
13 provided by Halo and Transcom.

14 Based upon even this conservative estimate, Halo and Transcom are benefiting
15 handsomely from their refusal to pay access charges and the longer they can continue this
16 arbitrage that provides them with free terminating service, the more money they put in
17 their pockets. They have tremendous incentive, therefore, to keep the scheme going as
18 long as possible by any possible means. Their arbitrage is a zero sum game, however,
19 that adversely affects the RLECs and their customers, as I describe later in my testimony.
20

21 **Q. Who is Halo?**

208. Report And Order And Further Notice Of Proposed Rulemaking released November 18, 2011 (“FCC November 18th Order”) at 749 (emphasis added).

⁸ December 5th Bankruptcy Testimony at Volume 1, page 43 lines 11-16)

1 A. Halo Wireless, Inc. is a corporation organized and operating under the laws of the
2 State of Texas. The Company is headquartered in Fort Worth, Texas.

3 Halo operates telephone plant and equipment in the State of Tennessee. Halo
4 Wireless has established physical points of interconnection with AT&T at various rate
5 centers located in the State of Tennessee.⁹ Halo is not certificated by the TRA, however,
6 to construct or operate telephone lines, plant or systems within Tennessee. Nor is Halo
7 certificated by the TRA to provide telecommunications services in Tennessee.
8

9 **Q. Please identify the officers of Halo.**

10 A. The following are the officers of Halo:

11 Russell Wiseman, Chief Executive Officer

12 Jeff Miller, Chief Financial Officer

13 Carolyn J. Malone, Secretary

14 Halo's official company address is:

15 2351 West Northwest Highway, Suite 1204

16 Dallas, Texas 75220¹⁰
17

18 **Q. Does Halo have any employees?**

19 A. Halo has only two employees – Miller and Malone whom are paid \$500 per
20 month. While he lists his position as CEO, Wiseman is not an employee of Halo.

⁹ Including at Chattanooga, Knoxville, Memphis and Nashville.

http://www.localcallingguide.com/lca_listexch.php?ocn=429F.

¹⁰ *Halo Bankruptcy Proceeding*, Transcript of Proceedings Conducted by the United States Trustee, Section 341 Meeting of Creditors held September 19, 2011 ("341 Transcript") at 42. Halo Wireless' principal address was previously 307 West Seventh Street, Suite 1600, Fort Worth, Texas 76102. This is also Transcom's address.

1 Wiseman is paid as an employee of an affiliate company, Source Communications of
2 America. No compensation is paid him by Halo.¹¹

3
4 **Q. Who owns Halo?**

5 A. Halo is owned by Robert S. Birdwell a/k/a Scott Birdwell (50%), Gary Shapiro
6 (10%), Timothy Terrell (40%).¹²

7
8 **Q. What type of operations does Halo claim?**

9 A. Halo claims to be a commercial mobile wireless service ("CMRS") provider.

10
11 **Q. What type of equipment does Halo claim to operate?**

12 A. Halo claims to operate wireless "base stations" by which it connects to its
13 "customers" in Tennessee. The base station equipment is leased by Halo from a
14 company called SAT Net.¹³ SAT Net is another affiliate of Halo. The officers of Sat Net
15 include the same Jeff Miller and Carolyn J. Malone, who are the officer/employees of
16 Halo. The common owners/investors between SAT Net and Halo are Scott Birdwell,
17 Gary Shapiro, and Tim Terrell.¹⁴ Halo also maintains interconnection facilities with
18 AT&T.

19
20 **Q. What type of wireless spectrum license does Halo hold?**

¹¹ 341 Transcript at 6-9.

¹² 341 Transcript at 15-16; and *Halo Bankruptcy Proceeding*, Motions of Timothy Terrell and Gary Shapiro for Adequate Protection Pursuant to 11 U.S.C. § 363 (Dkt No. 252).

¹³ 341 Transcript at 14 (Wiseman).

¹⁴ 341 Transcript at 15-16.

1 A. The FCC's web site indicates that Halo holds an FCC license in the 3650-3700
2 MHz spectrum.¹⁵ The FCC licenses 3650-3700 MHz service on a nationwide non-
3 exclusive basis. After obtaining a 3650-3700 MHz license (which is free), a licensee may
4 begin operations upon registration of individual transmission locations. A licensee may
5 not operate at any location until it has been registered.

6 The FCC's website also indicates that, on April 15, 2011, Halo received authority
7 for additional tower locations that it claims handle Tennessee calling traffic using this
8 spectrum; two locations in Tennessee (Gainesboro and Amherst) and one in Georgia
9 (Cartersville).¹⁶

10 3650-3700 MHz spectrum is of limited bandwidth. The spectrum is also non-
11 exclusive. It is offered for use on an "as-available basis" and, if there are too many
12 licensees operating locally in that spectrum, the quality of the transmission is degraded.
13 These factors result in a level of service quality that would be questionable for a high
14 volume customer.

15 There is no special regulatory status that comes with this free radio spectrum.
16 Licensees can provide private radio services or common carrier radio services. The type
17 of service actually provided, and not the mere holding of the spectrum license,
18 determines the regulatory classification of the licensee.¹⁷

19 It is the nature of the service actually provided by Halo that determines whether or
20 not it qualifies as CMRS. This is a factual determination and, while Halo has claimed
21 CMRS status, the issue is dependent upon the facts. As I will discuss, the traffic

¹⁵ <http://wireless2.fcc.gov/UlsApp/UlsSearch/licenseLocSum.jsp?licKey=3074072>.

¹⁶ <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/appMain.jsp?applID=4741944>.

¹⁷ 47 CFR § 90.1309 ("Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service.").

1 delivered to the RLECs by Halo is not a CMRS service offering by Halo. Moreover, it is
2 predominantly toll traffic originated by third party carriers, not Halo, as demonstrated by
3 Mrs. Robinson.

4
5 **Q. Are the April 2011 tower registrations in Gainesboro, Amherst and Cartersville**
6 **relevant to the service period during which the RLECs sent access bills to Halo?**

7 A. Not entirely and this demonstrates the overall falsity of Halo's claims. Tennessee
8 traffic began to flow from Halo to the RLECs in late 2010 during which time Halo was
9 only authorized to operate from three registered towers from which it could potentially
10 provide CMRS service, all of which were located in Texas.¹⁸ Not until April 2011 did
11 Halo register any towers in a Tennessee operating area (Metropolitan Trading Area or
12 "MTA"). I am advised that service cannot be operational until those registrations are
13 filed at the FCC. Thus, during the first five months for which the RLECs issued access
14 bills for intra-Tennessee calling, Halo had no authority to use the spectrum in Tennessee.
15 It strains credibility for Halo to claim that it was offering a wireless service product in
16 Tennessee when it had no authority to use wireless spectrum in Tennessee.

17
18 **Q. What type of service is Halo publically advertising?**

19 A. For end use customers, Halo advertises both a wireless product and an "over the
20 top," broadband based service. Halo advertises "mobile voice service plans," for which,
21 according to their website, all you need is "Halo service and our computer phone
22 software and you're ready to go." The website acknowledges Halo's wireless network

¹⁸ Prior to June 2011, Halo advertised its CMRS service area as follows: "Halo Wireless is now available in Tyler, Brenham, and Pleasanton, Texas. We are expanding our coverage area to other towns across the United States, so check back again soon if your area is not yet covered."

1 limitations, stating: "Halo service can be used via the Halo broadband network (where
2 available). However, when outside the Halo coverage area, a home or business
3 connection can be used."¹⁹
4

5 **Q. Are these services similar to any other telecommunication services available today?**

6 Yes. The service offered by Halo is very similar to magicJack, another "over the
7 top" provider. magicJack service simply requires software that is uploaded into a
8 computer and a device that plugs into a USB port on the computer. In order to make a
9 call using magicJack, the customer must have a broadband connection as the call is
10 actually transported over the Internet, thus the term "over-the-top." The call is not
11 originated by mobile wireless devices. Indeed, wireless service has nothing to do with it.

12 This same type of arrangement is what a Halo end-user customer would use to
13 place a call if not within calling distance of one of Halo's towers.

14 For those customers that may be within the limited operating range of a Halo
15 wireless tower, it appears the end-user customer would use the same computer phone
16 software, the same device plugged into a USB port, the only difference is the call would
17 pass over Halo's wireless network rather than some other telecom provider's broadband
18 network.
19

20 **Q. Is Halo providing wireless-based service to end users in Tennessee?**

21 A. I don't know. None of the terminating companies have seen any traffic
22 whatsoever originated by Halo coming to them. On a national level, Halo has issued only

¹⁹ <http://www.halowireless.com/vservice/index.jsp>.

1 a very limited number of these devices to end user customers.²⁰ In its bankruptcy
2 schedule filing of September 9, 2011, Halo lists only 140 such units: 30 as assigned to
3 “beta customers” and 11 assigned to “Halo staff” and the remainder (99) in inventory.²¹
4 There appear to be only 41 of them nation-wide as of September 2011. More recently,
5 Halo has conceded that there are only about 50 end user customers served nation-wide.²²
6 The Halo wireless end user customers do not pay for the service ... they receive service
7 for free.²³

8
9 **Q. Does the traffic that Halo is sending to the RLECs originate as Halo wireless traffic?**

10 A. No. In all of the traffic studies of which I am aware, in Tennessee, Georgia,
11 Texas, Missouri, Wisconsin and elsewhere, none of the traffic terminated was originated
12 by a Halo end user customer. None of the access bills that we have sent are for Halo-
13 originated calls. The issue of whether Halo is offering any type of wireless service to the
14 public, be it CMRS or not, is completely irrelevant to what Halo is sending to the RLECs.

15

²⁰ 341 Transcript at 30-31. “Mr. Wiseman: So we -- I mean, I'd answer the question this way. We -- Transcom is our only high-volume customer. We then have retail -- individual retail consumer-type customers. We call them the low-volume customers. We have dozens in markets around our --” NT at 30-31.

²¹ *Halo Bankruptcy Proceeding*, Schedule B describes “40 Interface Data Units (MiMAX Easy with Voice WiMAX 802.16e Indoor Gateway CPE RG211); 30 IDUs assigned to beta customers, 10 are located in Debtor’s corporate office” and “100 USBs (Airspan MiMAX-USB - Q-Series); 11 assigned to Halo staff, 89 are located in Debtor’s corporate office.” These are the devices used by end user customers. 341 Transcript at 40-41.

²² *Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc.*, Wisconsin Public Service Commission Docket No. 9594-TI-100, Halo Wireless, Inc. And Transcom Enhanced Services, Inc.’s Answers on Issues 1-8 in the Notice of Proceeding dated December 2, 2011 (“Halo/Transcom WI Issue 1-8 Answers”) at 4 (“Currently, Halo has approximately fifty consumer customers, around the nation, none of which have yet been converted to a payment relationship....”).

²³ *Halo Bankruptcy Proceeding*, Proffer of Testimony of Russ Wiseman On Behalf of Halo Wireless, Inc., The Debtor at 21. “Q: Are they paying customers? A: No, but the plan is for them to become paying customers, and for Halo to earn a profit) Q: Why are you not charging these customers today? A: Very simple. We are trying to build a base of customers as quickly and with as little marketing capital as possible. In effect, we are using a similar, though not the same, strategy as a Facebook or Yahoo. Offer a service for free to build a base, then work to convert that base to paying customers, in some form or fashion, as you demonstrate the value of your service.”).

1 **Q. Does Halo’s claim of providing end user service offerings have any relevance to the**
2 **RLECs’ complaint?**

3 A. No. There is absolutely no relevance of Halo’s end user service offerings to the
4 issues that the RLECs are raising in this case. Given the almost complete unavailability
5 of the devices required for the service and the fact that there are only 50 customers
6 nation-wide, this is not surprising. My conclusion is that Halo’s claim to be offering end
7 user wireless services in Tennessee is a red herring and a ruse.

8
9 **Q. Even were Halo to be using some form of end user wireless technology, including**
10 **CMRS, would that render all of its traffic CMRS?**

11 A. No. Carriers often operate different lines of business. For example, a carrier may
12 be a CMRS provider, an ILEC, an IXC, and a broadband provider each of which may be
13 treated differently for regulatory purposes. AT&T is such an example. The fact that a
14 carrier claims to be a CMRS provider in one aspect of its operations, does not mean that
15 all traffic handled by that carrier constitutes CMRS traffic such that any regulations
16 regarding non-CMRS traffic are inapplicable.

17
18 **Q. What type of traffic is Halo sending then?**

19 A. Access traffic. As explained by Ms. Robinson, the traffic received from Halo
20 consists of third party-originated calls, most of which are toll calls. Halo’s service
21 offering that is the subject of this complaint, regardless of what they may or may not be
22 doing elsewhere, is toll call delivery services provided to other interexchange carriers in
23 the least cost routing market. As discussed below, Transcom describes this as “voice

1 termination” services. Essentially, this involves the delivery of third party-originated toll
2 traffic to the final terminating company, the RLECs in this case.

3
4 **Q. What evidence do you have to support your position that the traffic in question is**
5 **access traffic?**

6 A. Ms. Robinson covers this topic extensively. The RLECs have reviewed industry
7 standard SS7 network data to confirm that access applies to the traffic in question.
8 Contrary to Halo’s claim that the traffic delivered to the RLECs is intraMTA, CMRS-
9 originated traffic, the SS7 data shows the following:

- 10 1. None of the traffic in question was originated by Halo;
- 11 2. The originating carriers of the traffic which the RLECs terminated on behalf
12 of Halo were ILECs, RBOCs, CLECs, cable companies and wireless
13 providers;
- 14 3. The traffic either originated as interstate or intrastate; and
- 15 4. The traffic which was originated by a wireless provider was either interMTA
16 or intraMTA.

17 Therefore, the RLECs have appropriately issued access invoices, recognizing the
18 appropriate type and jurisdiction of the traffic, and consistent with the lawful rates set
19 forth in our intrastate access tariffs. Ms. Robinson’s testimony provides more in-depth
20 discussion and analysis of the traffic Halo is sending to the RLECs for termination.

21
22 **Q. Is Halo certificated by the TRA to operate telephone equipment or provide**
23 **intrastate toll services?**

24 A. No. Halo is not certificated either to operate telephone equipment or to provide
25 intrastate interexchange services in Tennessee, although, Halo is doing both.

1 **Q. Your complaint is also filed against Transcom. Who is Transcom?**

2 A. Transcom is a corporation also organized and operating under the laws of the
3 State of Texas. Headquartered in Fort Worth, Texas, the Company operates switches in
4 Dallas, New York, Atlanta and Los Angeles. Transcom accepts traditional circuit
5 switched protocols such as Time Division Multiplexing (“TDM”) at these switches.²⁴

6 According to Transcom’s website, the company’s “core service offering” is
7 “voice termination services.” Voice termination service is the intermediate routing of
8 telephone calls between carriers for termination to the carriers serving the called party.
9 On its website, Transcom states it terminates “nearly one billion minutes per month”, and
10 provides service to the largest Cable/MSOs, CLECs, broadband service providers, and
11 wireless customers.²⁵ Its website further indicates that Transcom provides voice
12 termination services throughout the world with a focus on North America covering 70%
13 of the population.

14
15 **Q. Who are the officers of Transcom?**

16 A. The officers of Transcom are largely the same as Halo. Transcom’s website
17 identifies the following as officers:

18 Scott Birdwell, CEO and Chairman

19 W. Britt Birdwell, COO and President

20 Jeff Miller, Senior Vice President Strategy and Business Development

21 Carolyn J. Malone, Secretary and Treasurer.

22 Transcom’s company address is:

²⁴ RLEC Exhibit TMM-3.

²⁵ RLEC Exhibit TMM-4.

1 307 West Seventh Street, Suite 1600
2 Fort Worth, Texas 76102²⁶
3

4 **Q. Who owns Transcom?**

5 A. There are several investors. Robert S. Birdwell, a/k/a Scott Birdwell, is the
6 largest single individual owner.²⁷
7

8 **Q. Is this the same Birdwell that is the main shareholder of Halo?**

9 A. Yes, this is the same Scott Birdwell who also controls Halo. Mr. Wiseman, in his
10 current capacity as the CEO of Halo (having replaced Mr. Birdwell in that capacity),
11 reports to a management committee of the investor-owners: Scott Birdwell, Jeff Miller,
12 Carolyn Malone.²⁸ The decision to file Halo's bankruptcy was made by Scott Birdwell,
13 the Halo management team and its attorneys.²⁹ The bookkeepers and accountants for
14 Halo Wireless and the accounting records themselves are "all at the Fort Worth
15 address..." of Transcom.³⁰
16

17 **Q. Is Transcom registered with the Secretary of State to do business in Tennessee?**

18 A. No. I have researched the subject and there is no available information obtained
19 from the electronic records of the Tennessee Secretary of State showing Transcom as
20 authorized to do business in Tennessee. I conclude that Transcom is not authorized to do
21 business in Tennessee.

²⁶ This address was also previously listed for Halo.

²⁷ Halo/Transcom W1 Issue 1-8 Answers at 11.

²⁸ 341 Transcript at 64.

²⁹ 341 Transcript at 69-70.

³⁰ 341 Transcript at 52-53.

1
2 **Q. Is Transcom certificated to provide telecommunications services by the TRA?**

3 A. No. Based on a review of the TRA website, Transcom is not certificated in
4 Tennessee. As evidenced by traffic data, there is no disputing the fact that the Tennessee
5 RLECs are terminating traffic from Halo that originates and terminates in TN. Given that
6 Halo's only customer is Transcom, it is impossible to reach any other conclusion than
7 Transcom is operating in Tennessee carrying traffic that falls under the jurisdiction of the
8 Tennessee Regulatory Authority.
9

10 **Q. Why does the RLECs' Complaint include Transcom as a respondent?**

11 A. Transcom and Halo are operating in concert, engaging in the practice of access
12 arbitrage. Transcom aggregates third party toll traffic by advertising its "termination
13 service," then hands the traffic off to its affiliate, Halo, who misrepresents the traffic as
14 its own intraMTA CMRS traffic in order to avoid access charges. It is the RLECs
15 reasonable conclusion, that Transcom and Halo are manipulating the origination of the
16 call and, thus, misrepresenting the true characteristics of the call in order to avoid access
17 charges.
18

19 **Q. What is least cost routing?**

20 A. The origination and termination of a toll call may, and frequently does, traverse
21 several different networks before termination to an end user, all of which occurs almost
22 instantaneously and seamlessly, so that the end user customer, as well as the originating
23 and terminating carrier, are unaware of the multiple hand offs that may be occurring.

1 Interexchange carriers ("IXC"), wireless providers, and voice over Internet protocol
2 ("VoIP") providers are all searching for means to deliver traffic for termination at the
3 lowest possible cost. As a result, there are many carriers today offering wholesale
4 transport and/or termination service using least cost routing ("LCR") principals.
5 Unfortunately, some of these carriers misrepresent the nature of the traffic so as to avoid
6 access charges.

7
8 **Q. Please provide an example of a call that may involve LCR?**

9 A. For example, an end user served by a third party carrier dials a call to a location
10 outside the local calling area (interexchange, if wireline, or interMTA, if wireless) to an
11 end user served by one of the RLECs in Tennessee. The call would initiate over the
12 network operated by the calling end user's local service company and pass to an IXC.
13 That originating IXC could transport and terminate the call directly to the terminating
14 tandem for delivery to the RLECs end user customer. However, it is equally as likely
15 that the originating IXC will hand the call off to a second IXC that is offering wholesale
16 transport and/or termination using LCR principles. These LCR IXCs maintain routing
17 and rate tables (pricing) which are used to determine routing and compensation for the
18 hand-off of traffic and delivery to the called party's carrier.

19 An originating IXC may employ a LCR IXC's delivery path if it does not have its
20 own facilities to carry the call to the appropriate tandem provider, and/or the LCR IXC is
21 willing to carry that call at a lower cost than the originating carrier would incur to carry
22 the call itself. Once the call is handed off to the LCR IXC, the call is then delivered to
23 the tandem for termination or, if possible, the LCR IXC will send the call to yet another

1 communications provider such as a CLEC or, in this case, a carrier claiming CMRS
2 status. This final, delivering IXC will then send the call to the tandem using its
3 interconnection agreement with the tandem provider. If the LCR carrier delivers the call
4 to the tandem, the LCR carrier assumes responsibility, operational and financial, for
5 delivering to the terminating company.

6 If the LCR carrier hands off the call to another carrier, then that carrier, in this
7 case Halo, assumes responsibility, both operational and financial, for final delivery to the
8 terminating company. After the call is delivered to the tandem, the tandem provider
9 (AT&T) directs the call to the RLEC's end office from which the called customer is
10 served and the RLECs use their own networks to route the call to the end user.

11
12 **Q. How and why would Halo and Transcom be acting together?**

13 A. As its web site states, Transcom is long standing and very high volume LCR
14 carrier operating in the middle of the toll call networks. To the best of my knowledge,
15 Transcom has never directly delivered any call to the terminating company. Transcom
16 hands the call off to someone else *before* the final delivery step. In this way, Transcom
17 never becomes the delivering carrier and avoids direct liability for access charges, since
18 its identity never appears in the call path. Transcom's presence is invisible and non-
19 traceable to everyone but the carrier from whom it received the call and the carriers to
20 whom it handed off the traffic. But Transcom needs to be able to hand off that call for
21 termination, even if it doesn't perform that function.

22 Transcom previously employed notorious arbitragers, such as CommPartners and
23 Global NAPS, to deliver traffic. Global NAPs previously reported that a substantial

1 portion of its traffic was delivered to it by Transcom,³¹ a matter that Transcom then
2 conceded in a federal district court case on the sworn testimony of Scott Birdwell.³² As
3 Mr. Birdwell stated to the Supreme Court, New York County, last year, Global NAPs
4 began to “lose footprint” and was suffering from “service and financial instability.”

5 With Global NAPs in receivership and CommPartners in bankruptcy, Halo
6 provides a replacement vehicle for Transcom’s continuing arbitrage. This relationship
7 with Transcom explains the sudden explosion in the volumes of Halo’s traffic described
8 in Ms. Robinson’s testimony. A small CMRS service provider in the 3650-3700 MHz
9 bandwidth would not grow as quickly as we are seeing and the delivery of Transcom’s
10 LCR traffic through Halo is the explanation.

11
12 **Q. Has Halo conceded that it provides the call termination service on traffic aggregated**
13 **by Transcom?**

14 A. Yes. Halo has conceded in the context of the Bankruptcy proceeding that
15 Transcom is its customer for large volume delivery services – *its only customer*.³³ The

³¹ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, Docket C-2009-2093336, Opinion and Order entered March 16, 2010 (“that the majority of its [GNAPs’] traffic is received from three other carriers, Transcom, CommPartners and PointOne...”); *Joint Petition Of Hollis Telephone et al for Authority to Block the Termination of Traffic from Global NAPs Inc.*, New Hampshire Public Utilities Commission, Docket No. DT 08-028, Reconsideration Order, Order No. 25.088 dated November 9, 2009; and *Matter of the Complaint of AT&T Ohio v. Global NAPs, Ohio, Inc.*, PUCO Case No. 08-690-TP-CSS, Opinion and Order dated June 9, 2010.

³² *Verizon New England, Inc. v Transcom Enhanced Servs., Inc.* 2010 NY Slip Op 51073(U), 27 Misc 3d 1236(A), Decided on June 17, 2010 (<http://law.justia.com/cases/new-york/other-courts/2010/2010-51073.html>).

³³ 341 Transcript at 30 (“Mr. Wiseman: ... We -- Transcom is our only high-volume customer.”) and 32 (“Mr. Vardeman: What percent of your total revenue comes from Transcom? Mr. Miller: To today, it's 100 percent. Mr. Vardeman: Right. In the last year, what has it been? Mr. Miller: It would be 100 percent.”). See also Halo/Transcom WI Issue I-8 Answers at 4-5 (“Currently, the only [high volume] customer is Transcom, and traffic from Transcom provides 100 percent of Halo’s current revenues....”).

1 sudden ramp up of traffic that I described earlier is exclusively driven by the volumes
2 sent to Halo by Transcom.³⁴

3
4 **Q. Has Halo described the traffic exchange between itself and Transcom?**

5 A. Yes, in several contexts, Halo has described the connection with Transcom as
6 wireless-in-the-middle. This was included in a Halo ex parte filing made with the FCC
7 last August, a copy of which is attached as RLEC Exhibit TMM-5.

8 In other words, Halo and Transcom have been maintaining that, because they use
9 the 3650-3700 MHz spectrum in the middle of a call originated by someone else, it is
10 transformed into a CMRS call and, in essence, re-originated.

11
12 **Q. Has Halo described its network architecture?**

13 A. Yes, in the Bankruptcy Proceeding.³⁵ Halo's main switches are located in Dallas,
14 Texas which is the core of its data center. From there, Halo has three Points of Presence
15 ("POP") around the country: one in Atlanta, one in New York and a third in Los Angeles.
16 In addition Halo claims to operate 28 base stations that collect traffic and then transport it
17 back to the nearest POP. For example, traffic from the base stations serving customers in
18 Tennessee is routed to the POP in Atlanta, Georgia.

19
20 **Q. Have Halo or Transcom described specifically how Transcom delivers the traffic to**
21 **Halo?**

³⁴ 341 Transcript at 32 ("Ms. Sepanik: In your schedules, you list revenue in 2009 and 2010 and 2011 thus far. Can you tell me about why there's such a large increase between 2009 and 2010 and 2011? Mr. Wiseman: Because we grew our service base to our customer. Ms. Sepanik: With Transcom? Mr. Wiseman: With our customer. Ms. Sepanik: And your only customer is Transcom? Mr. Wiseman: We've established that already.").

³⁵ *Halo Bankruptcy*, Wiseman Deposition of January 4, 2012 at 42-43.

1 A. No. Other than in vague generalities (“mobile wireless”), they have refused to
2 identify the type of equipment or the location of the equipment.³⁶

3
4 **Q. Is there any independent confirmation that Halo and Transcom are exchanging**
5 **traffic using the 3650 -3700 MHz spectrum even today?**

6 A. No. Although I am not an engineer I seriously question whether Transcom and
7 Halo even bother to convert the traffic to wireless in the middle of the call path given
8 Halo and Transcom’s network architecture and the severe limitation of the spectrum that
9 I described previously. Again, Halo’s claim of using a wireless medium of call
10 backhauling with Transcom predates Halo’s authorization to use wireless spectrum.
11 Either Halo is misrepresenting its network, or it would appear has been operating using
12 unregistered towers.

13 Furthermore, given the limitations of the 3650 -3700 MHz wireless spectrum used
14 and the two companies’ network architecture, the claim that the hand off between them is
15 wireless defies logic, unless, of course, the real purpose is to engage in access arbitrage
16 by attempting to advance this preposterous claim that the traffic is intraMTA CMRS.

17
18 **Q. Even if true, is this theory of “wireless-technology-in-the-middle” of the call path a**
19 **valid basis for changing a call and re-originating it for billing purposes valid?**

20 A. No. The theory is complete fiction. Under long-standing FCC and court
21 precedent, the beginning and end points of a call determine whether the call is interstate

³⁶ 341 Transcript at 21-22 (Wiseman) and 22-24 (Wiseman refuses to state where the Transcom wireless CPE is located on customer confidentiality grounds.).

1 or intrastate.³⁷ These calling end points are identified by the telephone numbers
2 associated with the calling and called parties on the networks of the originating and
3 terminating carriers, as Ms. Robinson's testimony describes in more detail.

4
5 **Q. Has the FCC weighted in specifically on Halo's we-are-CMRS-in-the-middle-and-**
6 **all-of-our-calls-are-intraMTA argument?**

7 A. Yes, as noted previously, Halo approached the FCC in August of 2011, describing
8 its theory of access avoidance. The rural telephone community responded in September
9 2011 with an ex parte communication that I have attached as an exhibit to my
10 testimony.³⁸

11 Subsequently, in its November 18, 2011 Report and Order on access reform; the
12 FCC identified Halo by name, referenced its ex parte filing and stated its rejection of
13 Halo's theory that reciprocal compensation applies. The FCC did not create any new law
14 in this regard; it simply affirmed the existing rules that the RLECs have consistently
15 cited. The FCC's Order of November 18, 2011 is very clear that Halo's traffic does not
16 re-originate in the middle of a call when exchanged between Halo and Transcom customer
17 using wireless spectrum. As the FCC describes:

³⁷ See, for example, *Teleconnect Company v. The Bell Telephone Company of Pennsylvania et al.*, 6 FCC Rcd 5202, 5206 (1991); *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Rcd 1619, 1621 (1992); *Long Distance/USA et al. v. The Bell Telephone Company of Pennsylvania et al.*, 10 FCC Rcd 1634 1637-38 (1995); *The Time Machine*, 11 FCC Rcd 1186, 1190 (1995); Local Competition Order, *supra*, 11 FCC Rcd at 160171rl044; *Thrifty Call Decision*, *infra*; *NARUC v. FCC*, 746 F.2d 1492, 1498 (D.C. Cir. 1984); *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000).

³⁸ On September 22, 2011, representatives of TDS Telecom, the National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Missouri Small Telephone Company Group met with FCC staff to discuss Halo and its claims that traffic wirelessly handed off by its affiliate Transcom in the middle of call and subsequently delivery as CMRS transport re-originate the call so that it should be rated as a local call (i.e., intraMTA) regardless of the actual point of origination. Letter of Gregory W. Whiteaker to FCC dated September 23, 2011 and attachment, marked as RLEC Exhibit 6.

1
2 First, one wireless service provider [Halo] claims that calls that it receives
3 from other carriers, routes through its own base stations, and passes on to
4 third-party carriers for termination have “originated” at its own base
5 stations for purposes of applying the intraMTA rule. As explained below,
6 we disagree.

7 ***

8 We clarify that a call is considered to be originated by a CMRS provider
9 for purposes of the intraMTA rule only if the calling party initiating the
10 call has done so through a CMRS provider. Where a provider is merely
11 providing a transiting service, it is well established that *a transiting*
12 *carrier is not considered the originating carrier for purposes of the*
13 *reciprocal compensation* rules. Thus, we agree with NECA that the “re-
14 origination” of a call over *a wireless link in the middle of the call path*
15 *does not convert a wireline-originated call into a CMRS-originated call*
16 for purposes of reciprocal compensation and we disagree with Halo’s
17 contrary position.³⁹

18
19 **Q. Transcom has asserted that it is operating as an enhanced service provider (“ESP”)**
20 **and its aggregated toll traffic is exempt from access charges. Do you have a**
21 **response?**

22 A. The entire proposition that Transcom is an ESP is preposterous and, even were
23 Transcom to some how establish this as a fact, it makes no difference for billing
24 purposes.

25
26 **Q. What enhancements has Transcom claimed to provide?**

27 A. Transcom has never identified any enhancements that render it an ESP and its *ex*
28 *parte* letters to the FCC do not identify any either. Ensuring “that both sides can hear
29 each other” is hardly an enhanced service.⁴⁰ While also claiming to “offer enhanced

³⁹ FCC November 18th Order at ¶¶ 979 and 1006 (emphasis added).

⁴⁰ Transcom *Ex Parte* Letter dated October 19, 2011 at 1.

1 functions and capabilities to end users[.]”⁴¹ Transcom does not identify a single such
2 “enhancement.” It simply continues to proclaim that it is an ESP. Vague assertions that
3 simply mouth the words are an insufficient basis to determine ESP status.

4 Here, Transcom provides no end user services; nor does it offer any
5 enhancements discernable to the end user. Indeed, end users are completely unaware that
6 Transcom is even involved in call delivery.

7
8 **Q. Does Transcom’s ESP-in-the-middle position make sense in the context of it toll**
9 **aggregation service?**

10 A. None. The entire premise of treating a wholesale interexchange carrier as an ESP
11 is absurd and unsupportable both factually and legally. From its position of transporting
12 traffic in the middle of a call, Transcom has no opportunity to offer enhanced services.
13 Transcom is undertaking a simple delivery function as an intermediate transport provider.
14 There is no such thing as an “ESP-in-the middle.” Nor can Transcom point to any
15 precedent for one. Even if one were to give full credit to Transcom’s claim of ensuring
16 call quality, this is merely “incidental” to the telecommunication call traversing
17 Transcom’s network and is a service to which the called and calling parties are
18 completely oblivious.

19
20 **Q. Was the FCC aware of Halo’s claim to be serving an ESP and Transcom’s claim to**
21 **be one?**

⁴¹ *Id.*; See also Transcom *Ex Parte* Letter dated October 11, 2011 (“Transcom changes the content and often changes the form” of the calls that traverse it network).

1 A. Yes. The FCC's ruling expressly acknowledges all of the Halo/Transcom claims,
2 including that Transcom is an ESP.⁴² It still found that toll calls are not transformed.

3
4 **Q. Transcom claims that it has four "federal" rulings that it is an ESP. Have you**
5 **reviewed these decisions?**

6 A. Yes. I am not an attorney and will leave it to counsel to address the legal validity
7 and persuasiveness of these 2005 bankruptcy ruling involving Transcom. There is no
8 description, however, in those orders of the factual basis upon which the Texas
9 bankruptcy judge found ESP status in 2005. Regardless of what Transcom may have
10 been doing in 2005 or what it presented to the bankruptcy court, the question of
11 Transcom's current claim that it is entitled to ESP treatment when it participates in the
12 middle of a toll call has not been addressed.

13
14 **Q. Are intrastate access charges important sources of revenue for the RLECs?**

15 A. Yes and increasingly so. Although intrastate access revenues have been declining
16 over the past several years it is still a very important revenue source that helps to
17 maintain affordable basic local exchange service and access to advanced
18 telecommunication services to our customers in rural Tennessee. Collection of properly
19 billed intrastate access revenues is of critical importance to the RLECs, their residential
20 and business customers, and to the rural communities that we serve. Carrier of last resort

⁴² *FCC November 18th Order* at ¶ 1005. ("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.'").

1 voice service and access to an advance telecommunications network play a vital role in
2 economic development and community welfare.

3
4 **Q. Does non-payment by Halo uniquely affect the RLECs complainants in this case?**

5 A. No. We are aware of other Tennessee ILECs that are experiencing the same
6 issues with Halo. Also, rural telephone companies have filed similar complaints in
7 Georgia, Missouri and Texas. The Public Service Commission in Wisconsin recently
8 began an investigation on their own motion to investigate the practices of Halo and
9 Transcom.

10
11 **Q. Do Halo and Transcom require a certificate from the TRA to operate?**

12 A. Yes. Counsel advises that the Tennessee Code requires certification by the TRA:
13 • for the construction and operation of “any line, plant, or system, or route in or
14 into a municipality or other territory already receiving a like service from another
15 public utility, or establish service therein, without first having obtained from the
16 authority, after written application and hearing, a certificate”⁴³ or
17
18 • to “offer or provide any individual or group of telecommunications services,
19 or extend its territorial areas of operations without first obtaining from the
20 Tennessee regulatory authority a certificate of convenience and necessity for such
21 service or territory....”⁴⁴
22

23 The TRA defines “Telecommunications Services” as “[a] generic term describing two-
24 way communications services transmitted over communications facilities,” including
25 “voice, data, and video transmissions.”⁴⁵

⁴³ Tennessee Code 65-4-201(a).

⁴⁴ Tennessee Code 65-4-201(b).

⁴⁵ Rules of the TRA, 1220-4-80.01(1)(ee).

1 Both Halo and Transcom are doing these things. There is no question that the toll
2 calls aggregated by Transcom and forwarded to Halo for delivery are a voice two-way
3 communications. There is no dispute that both Halo and Transcom are operating
4 telephone plant and providing telecommunications services without certification.

5
6 **Q. Why should the Commission require certification by Transcom and Halo?**

7 A. First, because, as counsel advises, that is the law. But certification is advisable
8 from a policy perspective also. The absence of certification makes ensuring lawful
9 behavior more difficult. Indeed, general and legal fitness must be shown in order to
10 obtain a certificate. Also, the uneven application of certification requirements is contrary
11 to the regulatory objective of creating a level playing field. Also anti-competitive in
12 effect is that, by avoiding certification, Halo and Transcom avoid the payment of
13 regulatory assessments and universal service contributions. This type of regulatory
14 gaming is to be avoided.

15
16 **Q. At a minimum, what relief do the RLECs seek from the TRA?**

17 A. Halo and Transcom have materially misrepresented the traffic delivered to the
18 RLECs for the purpose and effect of engaging in tariff arbitrage and the avoidance of
19 lawful and effective charges for both inter and intrastate access charges. The RLECs,
20 therefore, request that the Commission:

21 1) Find that:

- 22 (a) Halo's intrastate toll traffic is subject to intrastate access charges;
23 (b) the RLECs have properly invoiced Halo; and
24 (c) Halo's nonpayment violates Tennessee law;

25 2) Certify that order to the Bankruptcy Court in Texas;

1 3) Find that Halo and Transcom are providing intrastate telecommunications
2 service without certificate from the Authority; and

3 4) Order that Halo and Transcom immediately cease operations in Tennessee
4 until that certification is obtained and Order AT&T to immediately disconnect
5 Halo.
6

7 **Q. Why does the Authority need to order AT&T to disconnect Halo?**

8 A. Simply stated, because under the architecture of the Tennessee public switched
9 network, our office and of most RLECs in Tennessee are served by the AT&T tandems.
10 Because of this indirect interconnection, the trunking and switching used on a Halo call
11 do not, on the RLEC end, have the ability to exclude Halo traffic separately. Only the
12 AT&T tandem has the ability to definitively stop the flow of Halo traffic.
13

14 **Q. What else do you recommend?**

15 A. The TRA should notify the Secretary of State and Department of Revenue regarding
16 Transcom's activities to determine registration and tax liabilities.
17

18 **Q. Does this conclude your testimony?**

19 A. Yes, thank you. I reserve the right to supplement my testimony as this proceeding
20 progresses.

RLEC EXHIBIT TMM-1



2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220

June 15, 2011

Concord Telephone Exchange Inc.
Access Service Center
NW 8702
PO Box 1450
Minneapolis, MN 55485-8702

RE: Invoice Number 0047429F-D-11115; 0047429F-D-11145

Dear Sir/Madam:

This will acknowledge receipt of your assigned invoice numbers 0047429F-D-11115 with a billing date of April 25, 2011; and 0047429F-D-11145 with a billing date of May 25, 2011. Please also note we only just received your April invoice on June 14, 2011.

Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marks".

John Marks
General Counsel
jmarks@halowireless.com

Halo
wireless

2351 W. Northwest Hwy, Suite 1204, Dallas, TX 75220

June 17, 2011

Tellico Telephone Company
Access Service Center
NW 8702
PO Box 1450
Minneapolis, MN 55485-8702

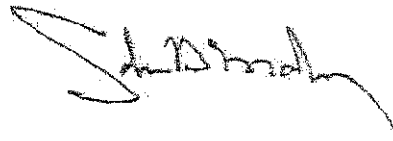
RE: Invoice No. 0240429F-D-11136

Dear Sir or Madame:

This will acknowledge receipt of your assigned invoice number 0240429F-D-11136 with a billing date of May 16, 2011.

Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

Sincerely,



John Marks
General Counsel
Halo Wireless, Inc.



2351 West Northwest Highway, Suite 1204, Dallas, TX 75220

June 23, 2011

Tennessee Telephone Company
Access Service Center
NW 8702
PO Box 1450
Minneapolis, MN 55485-8702

RE: Invoice No. 0061429F-D-11136

Dear Sir or Madam:

This will acknowledge receipt of your assigned invoice number 0061429F-D-11136 with a billing date of May 16, 2011.

Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marks".

John Marks
General Counsel
jmarks@halowireless.com



2351 West Northwest Highway, Suite 1204, Dallas, TX 75220

June 23, 2011

Crockett Telephone Company
Attention: TEC - RAD CBS Payment Processing
PO Box 24207
Jackson, MS 39225

RE: Invoice No. 00014809

Dear Sir or Madame:

This will acknowledge receipt of your assigned invoice number 00014809 with a billing date of May 10, 2011.

Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marks", written over a horizontal line.

John Marks
General Counsel
jmarks@halowireless.com

Halo
wireless

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

April 14, 2011

North Central Telephone Cooperative
P.O. Box 70
Lafayette, TN 37083-0070

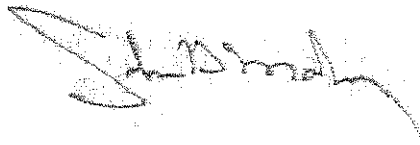
RE: Invoices Halo Wireless, Inc.

Dear Sir/Madam:

This will acknowledge receipt of your invoices of March 1, 2011 and April 1, 2011 under your assigned customer number 73130.

Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statements appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

Sincerely,



John Marks
General Counsel
jmarks@halowireless.com



2351 W. Northwest Hwy, Suite 1204, Dallas, TX 75220

May 24, 2011

Highland Telephone Cooperative, Inc.
Attn: David Crawford
PO Box 119
Sunbright, TN 37872

RE: Invoice Nos. 4002KY4296FGD-110501 and 0565TN4296FGD-110501

Dear Mr. Crawford:

This will acknowledge receipt of your assigned invoice numbers 4002KY4296FGD-110501 and 0565TN4296FGD-110501 with a billing date of May 1, 2011.

Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either.

Sincerely,

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

John Marks
General Counsel
Halo Wireless, Inc.

RLEC EXHIBIT TMM-2



625 Junction Rd,
Madison, WI 53717
www.tds telecom.com

June 22, 2011

Delivered signature required

John Marks, General Counsel
Halo Wireless, Inc.
2351 West Northwest Highway
Suite 1204
Dallas, TX 75220

Re: Past Due Accounts

Mr. Marks:

As of June 22, 2011 the following invoices billed to Halo Wireless by TDS Telecom are past due. In accordance with the provisions of the applicable TDS Telecom tariffs, invoiced amounts that are not paid by the due date are subject to late payment penalties, the requirement of deposits, service termination and other recourse measures.

TDS Company	BAN	Invoice Number	Amount Due
Concord Telephone- TN	0559429FD3	0047429F-D-11115	\$ 6,428.58
Tellico Telephone- TN	0578429FD3	0240429F-D-11136	\$ 10,876.49
Tennessee Telephone -TN	0575429FD3	0061429F-D-11136	\$ 44,931.72
Total			\$ 62,236.79

In order to avoid further action by TDS on this matter, Halo Wireless must **immediately remit payment in full** to the address listed on each invoice. If such payment is not received within thirty (30) days, TDS will pursue further actions. Should you desire to discuss this matter further please feel free to contact us at your earliest convenience.

Sincerely,

Catherine Vos
carrierbilling@tdstelecom.com
800-680-3919 ext 3
Carrier Account Services
TDS Telecom



625 Junction Road
Madison, WI 53717

John Marks, General Counsel
Halo Wireless, Inc.
2351 West Northwest Highway
Suite 1204
Dallas, TX 75220



Broadband. Voice. Data.

P O BOX 24207, JACKSON, MS 39225

June 28, 2011

HALO WIRELESS
3437 W 7TH STREET, SUITE 127
FORT WORTH, TX 76107

Re: 0576TW0429F

Dear Sir or Madam:

In a recent review of our accounts for Peoples Telephone Company, we discovered that your account is past due. Please remit payment within thirty (30) days. If payment has been previously paid or if you have any questions, please call me at 601.354.9070.

I appreciate your prompt attention to this matter.

Current -	\$4,469.15
1-30 Days -	\$8,013.69
31-60 days -	\$0.00
61-90 days -	\$0.00
over 90 days -	\$0.00

Sincerely,



Lisa Wigington

Director of Operations and Revenue Assurance

CC: Juanita Martin, Danya Stuart



P O BOX 24207, JACKSON, MS 39225

June 28, 2011

HALO WIRELESS
437 W 7TH STREET, SUITE 127
FORT WORTH, TX 76107

Re: 0561TW0429F

Dear Sir or Madam:

In a recent review of our accounts for Crockett Telephone Company, Inc., we discovered that your account is past due. Please remit payment within thirty (30) days. If payment has been previously paid or if you have any questions, please call me at 601.354.9070.

I appreciate your prompt attention to this matter.

Current -	\$2,450.85
1-30 Days -	\$7,677.47
31-60 days -	\$0.00
61-90 days -	\$0.00
over 90 days -	\$0.00

Sincerely,



Lisa Wigington

Director of Operations and Revenue Assurance

CC: Juanita Martin, Danya Stuart



Broadband. Voice. Data.

P O BOX 24207, JACKSON, MS 39225

June 28, 2011

HALO WIRELESS
3437 W 7TH STREET, SUITE 127
FORT WORTH, TX 76107

Re: 0583TW0429F

Dear Sir or Madam:

In a recent review of our accounts for West Tennessee Telephone Company, Inc., we discovered that your account is past due. Please remit payment within thirty (30) days. If payment has been previously paid or if you have any questions, please call me at 601.354.9070.

I appreciate your prompt attention to this matter.

Current -	\$2,982.91
1-30 Days -	\$9,189.75
31-60 days -	\$0.00
61-90 days -	\$0.00
over 90 days -	\$0.00

Sincerely

A handwritten signature in black ink, appearing to read 'Lisa Wigington', is written over the printed name and title.

Lisa Wigington
Director of Operations and Revenue Assurance

CC: Juanita Martin, Danya Stuart



NORTH CENTRAL
TELEPHONE
COOPERATIVE

June 28, 2011

Via Certified Mail
Return Receipt Requested

John Marks, General Counsel
Halo Wireless, Inc.
2351 West Northwest Highway
Suite 1204
Dallas, TX 75220

Re: Past Due Accounts

Mr. Marks:

As of June 28, 2011 the following invoices billed to Halo Wireless by North Central Telephone Cooperative, Inc. are past due.

Company	BAN	Invoice Number	Amount Due
Halo Wireless	094301	094301-20110420	\$39,070.65
Halo Wireless	094301	094301-20110601	\$21,686.77
Total			\$60,757.42

In accordance with the provisions of the applicable North Central Telephone Coop., Inc. tariffs, invoiced amounts that are not paid by the due date are subject to late payment penalties, the requirement of deposits, service termination and other recourse measures.

North Central Telephone Coop., Inc. is in receipt of your letter dated April 14, 2011 wherein Halo Wireless asserts that it is a CMRS provider and dispute North Central Telephone Coop., Inc. bills on the grounds that the charges "appear to relate to transport and termination of intraMTA traffic." We are aware of numerous industry allegations, based upon traffic analysis, that none of the traffic delivered is originated by Halo Wireless and, moreover, that the vast majority of the traffic originates on wireline LEC or cable company networks and is not CMRS, let alone intraMTA CMRS. Your letter contains no fact that would support your claims to the contrary.

We, therefore, reject Halo Wireless' claim that the traffic delivered is not properly classified as exchange access to which tariffed access rates apply. Halo Wireless has used North

Central Telephone Coop., Inc. terminating access services whether it formally ordered them or not. A separate contract is not required for the tariff to apply.

If Halo Wireless continues to insist that the traffic is intraMTA wireless traffic, we request that Halo Wireless immediately provide the following:

1. A demonstration supporting Halo Wireless' contention that the traffic is intraMTA wireless; and
2. A description of Halo Wireless' participation in the wholesale IXC market, including upstream carriers from whom Halo Wireless receives traffic.

In conclusion, Halo Wireless' dispute is rejected. In order to avoid further action by North Central Telephone Cooperative, Inc. on this matter, Halo Wireless must **immediately remit payment in full** to the address listed on each invoice.

Sincerely,


Johnny L. McClanahan
VP Finance and Administrative Services



7640 Morgan County Hwy
PO Box 119
Sunbright, TN 37672

EMAIL
HIGHLAND@HIGHLAND.NET

voice 423/628-2121
423/663-3036
606/276-5311

fax 423/628-2409

June 24, 2011

*Certified Mail
Return Receipt Requested*

John Marks, General Counsel
Halo Wireless, Inc.
2351 West Northwest Highway
Suite 1204
Dallas, TX 75220-8411

RE: Past Due Account

Mr. Marks:

As of June 01, 2011 the following invoice billed to Halo Wireless by Highland Telephone Cooperative, Inc. is past due. In accordance with the provisions of the applicable Highland Telephone tariff, invoiced amounts not paid by the due date are subject to late payment penalties, the requirement of deposits, service termination and other recourse measures.

Ernest A. Petroff
ATTORNEY

DIRECTOR

James E. Terry
PRESIDENT

John Haynes
VICE PRESIDENT

Clara Terry
SECRETARY/TREASURER

Mickey Bingham

Jan Byrd

Loma Denney

David Freytag

Sneha Jo Jones

Sam Strunk

John Tate

Jerry Williams

Invoice	BAN	Amount
0565TN4296FGD-110501	0565TN4296FGD	\$127,342.49

Highland Telephone Cooperative is in receipt of your letter dated May 24, 2011 wherein Halo Wireless asserts that it is a CMRS provider and disputes Highland Telephone's bills on the ground that the charges "appear to relate to transport and termination of intraMTA traffic." Based upon our analysis, none of the traffic delivered was originated by Halo Wireless. Moreover, the vast majority of the traffic originates on wireline LEC or cable company networks and is not CMRS, let alone intraMTA CMRS. We, therefore, reject Halo Wireless' claim that the traffic delivered is not properly classified as exchange access to which tariffed access rates apply. Halo Wireless has used Highland Telephone's terminating access services whether it formally ordered them or not. A separate contract is not required for access tariffs to apply.

If Halo Wireless continues to insist that the traffic is intraMTA wireless traffic, Highland Telephone requests that Halo Wireless immediately provide the following:

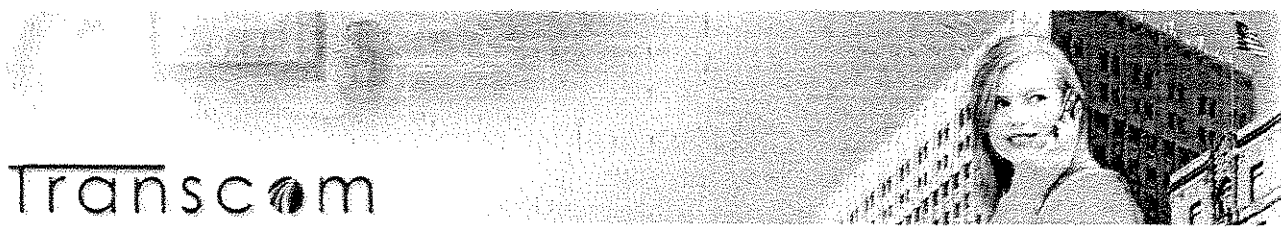
1. A demonstration supporting Halo Wireless' contention that the traffic is originated as intraMTA wireless; and
2. A description of Halo Wireless' participation in the wholesale IXC market, including identity of the upstream carriers from whom Halo Wireless receives traffic.

In conclusion, Halo Wireless' dispute is rejected. Halo Wireless must immediately remit payment in full to the address listed on the invoice.

Sincerely

David C. Crawford
Access Services Manager
423 628-2750 ext 280
dcave@highlandtel.net

RLEC EXHIBIT TMM-3

[About us](#)[Products & Services](#)[Careers](#)[Investors](#)[Contact us](#)[Home](#)

Products & Services



Transcom's end-to-end global connectivity and comprehensive services do more than meet your communications needs—they give you a competitive advantage in the marketplace.

Our worldwide network, state-of-the-art technology and unmatched reliability enable us to bring you the highest quality services at competitive prices. With Transcom, it's never "one size fits all." We work closely with you to understand your needs and create customized solutions that keep your costs low—without sacrificing quality or efficiency.

Unlike many of our competitors, we're easy to talk to. As a Transcom customer, you'll always have direct access to our executive and customer service teams. That means that when a question comes up, you don't have to work hard to get an answer. As we see it, easy access and personalized service build closer, more profitable relationships.

Transcom is a new kind of communications company. We understand your business. We have the energy and know-how to support your success. **And we make it all easy for you.**

Voice Termination Service

This is our core service offering. Transcom provides termination services throughout the world with a focus on North America. Transcom has an onnet footprint that covers about 70% of the US Population. Customers looking for a TDM interconnect can connect to Transcom's Veraz based network at the following switch locations:

Atlanta

Dallas

Los Angeles

New York

Customers who do not have facilities at these locations or prefer to connect via an IP connection can connect to us via our Nextone SBC (Session Border Controller). We support most protocols with H.323 and SIP being the most common.

Voice Origination Services

Transcom provides origination services using Toll Free numbers and local DID's. Transcom will pass the originated call to the Customer using dedicated facilities or via an IP handoff. Customer can connect to the above switch locations for this product also.

Toll Free Termination Services

Transcom noticed that many of their customers were having a problem terminating toll free numbers that end-users were calling. This was especially true for many emerging broadband IP Telephony providers. Customers can direct their outbound toll free calling for Transcom to terminate.


2009 © Copyright Transcom Enhanced Services

RLEC EXHIBIT TMM-4

The Transcom logo features the word "Transcom" in a sans-serif font, with a stylized globe icon replacing the letter 'o'.[About us](#)[Products & Services](#)[Careers](#)[Investors](#)[Contact us](#)

Transcom Enhanced Services is a wholesale enhanced voice service provider serving most of North America. A facilities based provider, Transcom terminates nearly one billion minutes per month. Transcom's customers include the largest Cable/MSOs, CLECs, broadband service providers, and wireless carriers. Transcom's focus is US/Canada termination but its customers are located globally.



 [Locate star to view offices](#)

Our Goal is to provide our
Customers with:



Customer Service



Seamless Interoperability



Reliable Service

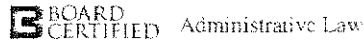


Best Pricing in the Industry

Transcom provides superior customer service, seamless interoperability with the customer network, reliable voice service and the best pricing in the industry.

2009 © Copyright Transcom Enhanced Services

RLEC EXHIBIT TMM-5



dotLAW.biz

W. Scott McCollough
1250 South Capital of Texas Highway, Bldg 2-235
West Lake Hills, Texas 78746
Phone: 512.888.1112
Fax: 512.692.2522
wsmc@dotlaw.biz

August 12, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, DC 20554

Ex Parte Notice

RE: *Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Board on Universal Service, CC Docket No. 96-45*

Dear Ms. Dortch:

Halo Wireless, Inc. hereby gives notice that it met with the Commission persons identified below on August 10, 2011. The Halo representatives were Russ Wiseman, Halo's President and Chief Operating Officer, counsel Steven Thomas of McGuire, Craddock & Strother, P.C and counsel W. Scott McCollough of McCollough|Henry, P.C. The Commission participants were:


Wireline Competition Bureau: Randy Clarke, Travis Litman, John Hunter, Al Lewis, Richard Hovey, Rebekah Goodheart and Marcus Maher

Wireless Telecommunications Bureau: Joseph Levin

Enforcement Bureau: Margaret Dailey

The purpose of the meeting was to introduce Halo to the Commission, describe Halo's operations and to respond to certain assertions made by various RLECs in recent filings and meetings with the Commission in the context of the above-cited proceedings. Halo distributed the attached document that served as the basis for discussion during the meeting.

Sincerely,


W. Scott McCollough
Counsel for Halo Wireless, Inc.



FCC Meeting
Wireline Competition Bureau and Wireless
Telecommunications Bureau

Halo Wireless, Inc.

Connect America Fund, WC Docket No. 10-90

A National Broadband Plan for Our Future, GN Docket No. 09-51

Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

High-Cost Universal Service Support, WC Docket No. 05-337

Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Federal-State Board on Universal Service, CC Docket No. 96-45

August 10, 2011

Agenda

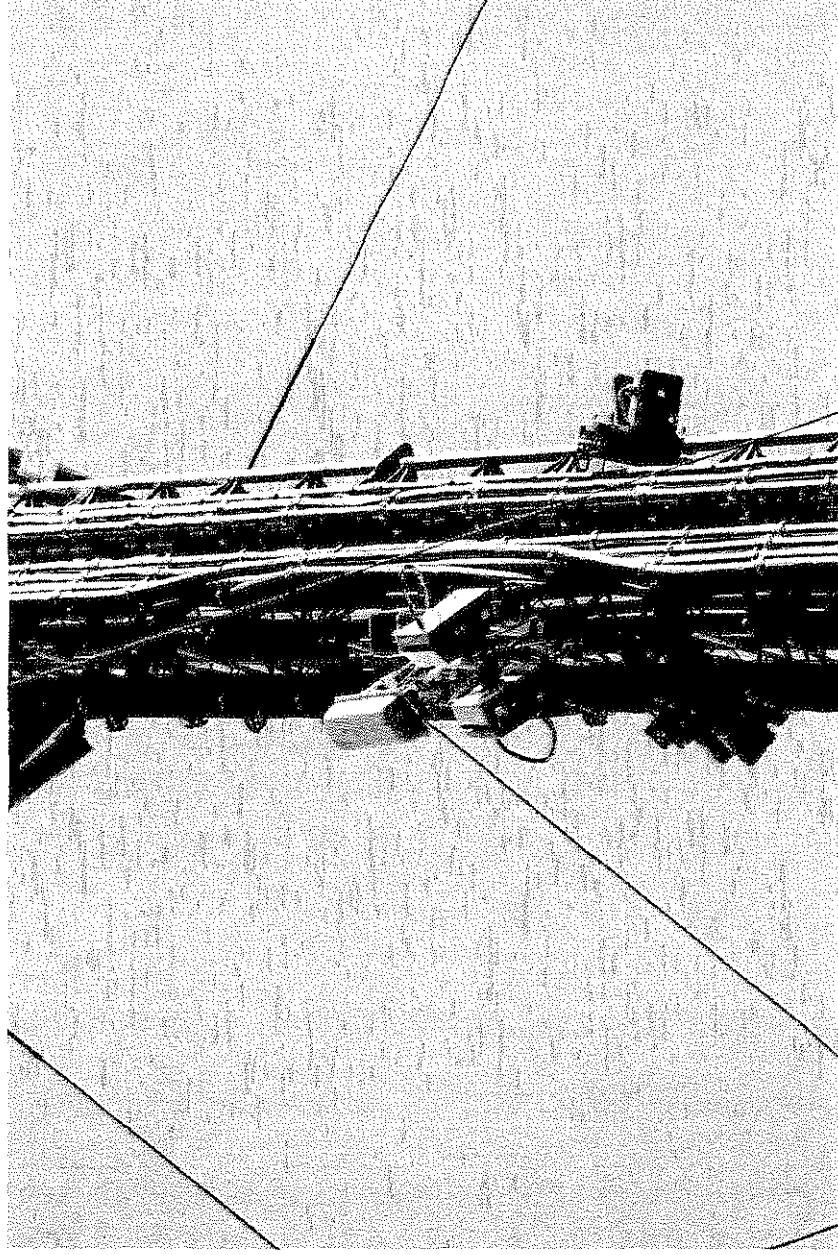
- Introduce Halo representatives
- Provide FCC staff an overview of Halo Wireless, Inc.
- Address questions and allegations raised by ILECs in state complaints
- Q&A

Halo Wireless has built an all IP network, presently in 28 markets across the U.S., using 3.65 Ghz spectrum and 802.16(e) Wi-Max wireless access technology

MTA	Tower Locations
LA	Amargosa Valley, NM
San Francisco	Tulare, CA
Chicago	Danville, IL
Detroit	Britton, MI
Charlotte	Orangeburg, SC
Dallas-Fort Worth	Tyler, TX
Atlanta	Cartersville, GA
Tampa-Orlando	Palm Coast, FL
Houston	Brenham, TX
Southeast FL	Bonita Springs, FL
New Orleans	Hammond, LA
Cleveland	Huntsburg, OH
Cincinnati-Dayton	Wilmington, OH
St Louis	Wentzville, MO

MTA	Tower Locations
Milwaukee	New Glarus, WI
Louisville	Paducah, KY
Memphis-Jackson	Greenville, MS
Birmingham	Graysville, AL
Indianapolis	Portland, IN
San Antonio	Pleasanton, TX
Kansas City	Junction City, KS
Jacksonville	Green Cove Springs, FL
Columbus	Carroll, OH
Little Rock	Van Buren, AR
OKC	Henryetta, OK
Nashville	Gainesboro, TN
Knoxville	Amherst, TN
Tulsa	Enid, OK

Halo Wireless has invested substantial capital in its 3.65 Ghz
WiMax 802.16(e) wireless network.



The diagram illustrates a network architecture with a central core labeled "IP Backhaul". This core is connected to several network elements: two SBC (Session Border Controller) units, two MGW (Media Gateway) units, and a SS7 (Signaling System No. 7) interface. The SS7 interface is connected to a cloud labeled "SS7". The MGW units are connected to two clouds labeled "LATA '111'" and "LATA '222'", each containing an AT (Access Terminal) node. The SBC units are connected to a cloud labeled "CPE 'A'" and "CPE 'B'". A BTS (Base Transceiver Station) is also connected to the core. The diagram shows various links and connections between these components, including "A Links" and "Type 2A" links.

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

- ① Broadband wireless mobile voice and data services to retail consumers and small businesses in under served rural communities throughout the U.S.
 - Voice service currently requires soft client running on laptop.
 - Awaiting FCC certification on Airpsan USB device.
 - Testing integrated 3.65/WiFi access points for enhanced mobility.
 - Evaluating iPhone/Android smart phone clients.
 - Hundreds of thousands of marketing dollars spent to date; small base of retail customers acquired, with continued efforts to expand base underway.

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

- ② Common Carrier wireless exchange services to ESP and enterprise customers.
 - One primary customer; other arrangements under development
 - Customer connects wirelessly to Halo base stations in each MTA. All traffic traversing interconnection arrangements originates from customer with wireless link to base station in same MTA.
 - Halo transmits intelligence of the customer's choosing.
 - Operating Rules and Requirements:
 - o Must obtain interconnection agreements with ILECs to enable traffic exchange across wide footprint, starting with principal ILEC that operates primary tandems.
 - o Only traffic destined to telephone exchange in the same MTA in which the tower resides is accepted for termination over this link; all other traffic is routed to an DXC for handling, and exchange access charges are paid.

Halo's detractors are railing at the rules, but blaming Halo.

Are Halo's services CMRS?

- Halo's small volume customers can make and receive calls using soft clients on laptop computers or tablets connected to mobile/nomadic CPE. While not as elegant as a mobile phone, these services are functionally equivalent to that where traditional handset is used.
- Halo's high volume service offering is also CMRS, as the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See, In Re Atlantic Richfield Co.*, 3 FCC Rd. 3089 (1988), *aff'd* PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).

Halo's detractors are railing at the rules, but blaming Halo.

Is Halo's traffic local IntraMTA?

- The origination point for Halo traffic is the base station to which Halo's customers connect wirelessly.
- Halo is transmitting, between or among points specified by the user, information of the user's choosing.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See, In Re Atlantic Richfield Co.*, 3 FCC Rd. 3089 (1988), *aff'd* PUIC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).
- Halo's voice service is entirely within the MTA, and is therefore telephone exchange service, not telephone toll.
- Halo does not provide roaming.

Halo's detractors are railing at the rules, but blaming Halo

Halo's signaling practices follow industry standards and comply with the FCC's proposed "Phantom Traffic" rules

- Halo connects to the customer using WiMax, an IP-based technology fully capable of supporting native SIP communications.
- Halo locates the SIP header information corresponding to the Calling Party Number and populates the address in the SS7 ISUP IAM CPN parameter address signal location. Halo does not change or manipulate this information in any way; it is protocol converted and populated without change.
- Since Halo's customer is the responsible party, Halo also populates the SS7 Charge Number parameter with a Halo number corresponding to the customer's BTN for that MTA.
- The FCC's proposed phantom traffic rules would require precisely the practices Halo has adopted.

Halo's detractors are railing at the rules, but blaming Halo.

RLEC Interconnection Activities

- Halo has accepted proper requests for interconnection from almost 50 RLECs, and the parties are currently in § 252 negotiations. Halo is paying interim compensation to those carriers.
- The RLECs where we have disputes:
 - Do not like the "no compensation if no contract or request for interconnection" result prescribed in *T-Mobile*, and criticize Halo for relying on that result.
 - Refuse to follow rule 20.11(e) requiring them to both "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act." We believe they are motivated by desire to receive very high non-TELRIC prices for termination and are concerned that if they "request interconnection" they may have to interconnect via IP.
 - Are misusing the "§ 252 process" to challenge and limit Halo's activities pursuant to federal permissions.
- Their desired result is to deem Halo's traffic as subject to access charges, not § 251(b)(5), and classify Halo as an IXC rather than a CMRS provider.
 - Statutory service definitions and FCC precedent do not support these outcomes.

The issues raised by the RLECs fall exclusively within the FCC's jurisdiction, and are not suitable for state commissions

- Neither Congress nor the Commission have delegated enforcement of § 332 and rule 20.11 to the states.
 - The states have delegated power to conduct arbitrations, but only for topics covered by § 251 (unless the parties voluntarily consent to negotiate without regard to standards in the Act).
- Halo continues to be prepared to negotiate, and if necessary arbitrate, for interconnection agreements implementing the mandatory topics.
 - The debate is not about how to implement the RLECs' § 251(a), (b) and/or (c) duties. Rather, the RLECs are challenging CMRS' right to enter the market with a new business model and compete directly with the incumbents for telephone exchange and exchange access service.
- Only the FCC can decide whether an activity is or is not "wireless" or "CMRS"; and the FCC has already decided when a CMRS service constitutes "telephone exchange service" vs. "telephone toll."
 - The scope and nature of "permitted activities" under a nationwide FCC license is not a proper topic for state-level arbitration.
 - One nationwide license cannot have 50 variations, and cannot be subjected to 50 state-level cases and 50 state-level re-hearings of FCC decisions.



FCC Meeting August 10, 2011

Thank you for your time.

RLEC EXHIBIT TMM-6

DONALD L. HERMAN, JR.
GREGORY W. WHITEAKER

TEL 202-600-7272
FAX 202-706-6056
P.O. BOX 341684
BETHESDA, MD 20827

HERMAN & WHITEAKER, LLC

VIA ECFS

September 23, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: *Ex Parte* Notice - Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch:

On September 22, 2011, Tom McCabe and Norman Kennard representing TDS Telecom (TDS), Colin Sandy, Bob Gnapp, and Mark Novy of the National Exchange Carrier Association (NECA), Jill Canfield of the National Telecommunications Cooperative Association (NTCA), Steve Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the undersigned counsel on behalf of twenty-eight members of the Missouri Small Telephone Company Group (MoSTCG), met with Albert Lewis, John Hunter, Randy Clarke, Victoria Goldberg and Rebekah Goodheart of the Wireline Competition Bureau (WCB), Margaret Dailey and Terry Cavanaugh of the Enforcement Bureau, and Peter Trachtenberg of the Wireless Telecommunications Bureau of the Federal Communications Commission (FCC or Commission). Mr. Gnapp and Mr. Novy participated in the meeting via telephone.

The participants discussed the attached presentation regarding Halo Wireless, Inc. (Halo). Specifically, the representatives of TDS discussed TDS's experience in seeking compensation from Halo for the termination of traffic. The representatives of NECA presented a summary of the significant volumes of Halo traffic being terminated to NECA members. The participants also explained that the "re-origination" of a call over a wireless link in the middle of the call path does not alter the jurisdiction of the call or convert a wireline-originated call into a wireless call.

Herman & Whiteaker, LLC
September 23, 2011
Page 2 of 2

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions or require additional information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Whiteaker', with a long horizontal flourish extending to the right.

Gregory W. Whiteaker

Attachment

cc: (via email)

Albert Lewis
John Hunter
Randy Clarke
Victoria Goldberg
Rebekah Goodheart
Margaret Dailey
Terry Cavanaugh
Peter Trachtenberg

Halo/Transcom Access Arbitrage

Presentation to FCC

September 22, 2011

Participants

TDS Telecom

Missouri Rural ILECs

NECA

OPASTCO

NTCA



Summary

- Halo is sending a combination of wireline and wireless-originated access traffic and attempting to disguise it as intra-MTA wireless-originated traffic to get free termination service;
- Transcom is aggregating toll traffic and delivering the traffic to its affiliate Halo Wireless in order to fraudulently avoid paying access charges.
- TDS has used the originating and terminating end-points of the calls to establish 78% is wireline interexchange , 10% is non-Halo wireless inter-MTA; and 12% non-Halo wireless local or intraMTA CMRS.
- Halo Wireless has filed bankruptcy and the owner Scott Birdwell has created a new company Halo Wireless Services Inc. to interconnect in Verizon Markets.



FCC Should Address Access Arbitrage

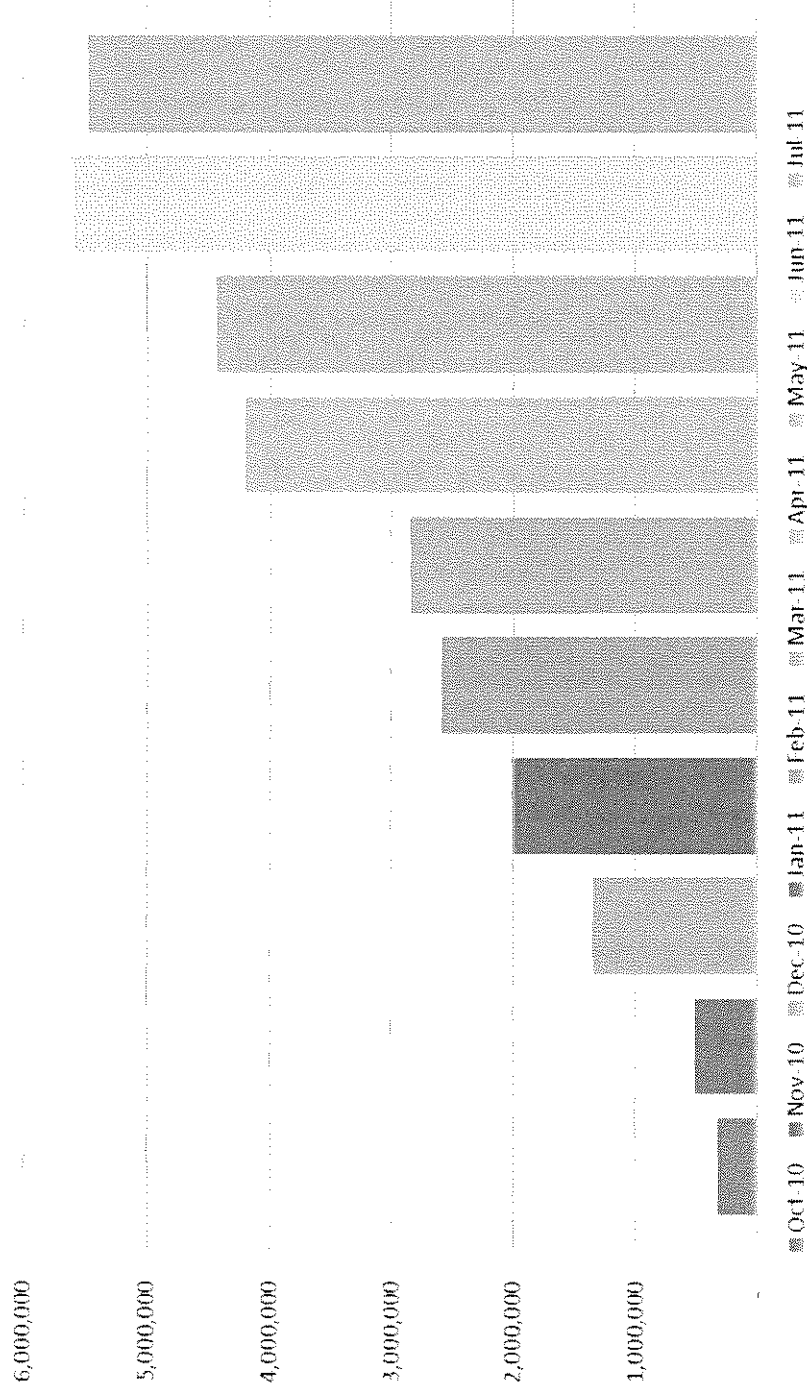
- * FCC should confirm that “technology-in-the-middle” does not alter jurisdiction or nature of traffic
 - * Confirm legal obligation to pay interstate access, consistent with “IP-in-the-middle” precedent
 - * Reaffirm state authority to address disputes over intrastate traffic, regardless of technology in the middle.
- * FCC should confirm that “re-origination” of traffic does not alter jurisdiction or nature of traffic
 - * Reaffirm “end-to-end” analysis, even if “CMRS-in-the-middle”.
- * FCC should require all providers to accurately populate and pass call originating information for all traffic originating or terminating on the PSTN (enforcement mechanisms necessary)
 - * Include originating carrier information also to allow accurate identification of responsible parties.
- * FCC should confirm that carriers may cease accepting and terminating traffic delivered through access avoidance schemes.



TDS Telecom – Halo Wireless/Transcom Enhanced Services (Transcom) Complaint

- TDS has complaints pending in GA and TN against Halo Wireless and Transcom, and is participating in a complaint in MO against Halo Wireless.
- 2009-2010 – Halo Wireless began opting into interconnection agreements between AT&T and other CMRS Providers.
- October 2010 – TDS began receiving minutes from Halo Wireless for termination. The total number of minutes in October 2010 was approximately 327,000. By August 2011 TDS terminated over 5,000,000 minutes.

Halo Wireless Minutes Terminated by TDS Telecom



TDS Telecom – Halo Wireless/Transcom Enhance Services Inc. (Transcom) Timeline

- April 2011- Based on a review of SS7 data TDS issued access invoices to Halo Wireless.
- Halo has disputed these access bills alleging that Halo is a Commercial Mobile Radio Service (CMRS) provider, and claiming that all the traffic delivered to TDS for termination is intraMTA CMRS traffic which is not subject to access charges.
- August 2011 – Through August 2011 access charges owed by Halo Wireless is in excess of \$800,000 and grows by \$150,000 per month.

TDS Telecom – Halo Wireless/Transcom Timeline

- * April 2011 – Halo Wireless Services Inc. was incorporated and has entered into or seeking interconnection agreements in Verizon markets.
- * August 8, 2011 – Halo Wireless filed for voluntary bankruptcy, owing millions of dollars to RLECs and AT&T.

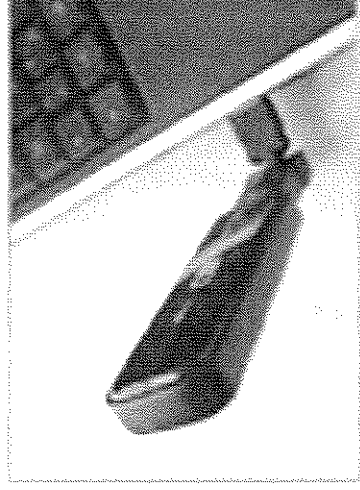
Bankruptcy

- TDS, like all RLECs, has lost millions of dollars in access revenues because of access arbitrage.
- Companies such as Global NAPs, CommPartners and now Halo Wireless create regulatory and legal loop holes that do not exist in order to exploit lengthy and costly regulatory delays while continuing to use the networks of RLECs free of charge.
- Transcom has benefited greatly from these schemes as they have used these carriers to terminate millions of minutes without payment of access charges.
- The loss of these revenues ultimately impacts deployment of broadband services to rural America.



Halo Wireless Service

- Halo Wireless' Ex Parte Alleges to Provide Two (2) Services;
(1) Broadband Wireless Mobile Voice and Data Services to Retail Consumers and (2) Common Carrier Wireless Exchange Service to ESPs and Enterprise Customers
- Halo Wireless' Retail Voice Service offering is similar to that of Magic Jack in that it requires a broadband connection and a laptop computer.



Halo Wireless Service

- Halo's primary business is the "High Volume" Customer offering, delivering third-party traffic to the tandem for termination to the local exchange carriers' end user.
- Halo Wireless' "High Volume" Customer offering allows its affiliate company Transcom Enhanced Services, Inc. to terminate traffic, principally toll, aggregated from IXC's, Cable Providers, CLEC and Wireless Providers.
- Transcom is the only "High Volume" Customer served by Halo.

How is Transcom Enhanced Service, Inc. Involved in Access Arbitrage?

- * According to Transcom's website, its core service offering is "voice termination service" for which it boasts a current run rate of nearly one billion minutes per month.
- * Despite the importance of local termination to its business, it does not appear that Transcom directly interconnects with a tandem provider, but instead it uses a third-party provider to deliver traffic to the tandem operator.
- * The CEO and President of Transcom and Halo Wireless were the same individual. (Only recently has Halo Wireless identified a new CEO.)

Actual Halo Call Flow Diagram

Call
Origination

ILEC/RBOC
(35%)*

CLEC
(44%)*

Wireless/PCS
(21%)*

Least Cost
Routing

Least Cost
Router
(Transcom
Or Other)

Transcom
Switch

Transcom
MTA
Presence

Halo Wireless

Alleged Mid-Call
Wireless Hand-Off

Tandem
(AT&T)

Call
Termination

Sub-Tending
Wireline
Office
(TDS)

* All Halo-delivered traffic is third-party originated. 88% of traffic is interexchange or interMTA, based upon originating and terminating points, to which access applies. The amount in the parenthesis is the percentage of access rated traffic originated by each carrier segment (ILEC/RBOC, CLEC/Cable and Wireless/PCS).

Halo claims all traffic is IntraMTA CMRS

- Composite results of analysis performed on over 2.5 Million minutes terminated by TDS companies for Halo.
- Majority (78%) of traffic was originated by non-CMRS wireline CLEC, ILEC, and cable companies.
- Less than 12% was either wireline local or IntraMTA CMRS.
- 88% of the traffic is subject to interstate and intrastate access charges.
- No traffic was originated by an end-user customer of Halo.

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- Halo's claim that all traffic traversing interconnection arrangements originate from customer wireless link base stations in the same MTA is simply false and misleading.



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Orig Company	Orig FCS Date	Orig LATA	Form Of R	Form FCS Type	Team Company	Team LATA	FCS DCN	Granted Date	Orig Telephone	Team Telephone	M21
SPRINT SPECTRUM LP	PCS	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/9/2011	706 632-XXXX	706 632-XXXX	0.1
NEW CINGULAR WRL - GA	WIRELESS	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/5/2011	706 631-XXXX	706 632-XXXX	0.3
VERIZON WIRELESS-GA	WIRELESS	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/15/2011	706 699-XXXX	706 838-XXXX	0.1
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/30/2011	706 721-XXXX	706 258-XXXX	1.2
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/27/2011	706 722-XXXX	706 258-XXXX	1.5
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/27/2011	706 722-XXXX	706 632-XXXX	1.7
KNOLGY OF GEORGIA, INC. CLEC		442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/3/2011	706 729-XXXX	706 374-XXXX	2.4
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/25/2011	706 733-XXXX	706 258-XXXX	0.4
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/20/2011	706 733-XXXX	706 632-XXXX	2.3
COMCAST PHONE OF GEORGIA, LLC - GA	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/14/2011	706 733-XXXX	706 632-XXXX	2.3
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/10/2011	706 736-XXXX	706 374-XXXX	21.7
DELTACOM, INC. - GA	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/26/2011	706 736-XXXX	706 632-XXXX	1.9
KNOLGY OF GEORGIA, INC. CLEC		442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/5/2011	706 737-XXXX	706 374-XXXX	9.1
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/31/2011	706 737-XXXX	706 632-XXXX	0.1
BELLSOUTH SO BELL	RBOC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/29/2011	706 737-XXXX	706 632-XXXX	0.4
KNOLGY OF GEORGIA, INC. CLEC		442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/5/2011	706 738-XXXX	706 374-XXXX	7
KNOLGY OF GEORGIA, INC. CLEC		442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/31/2011	706 738-XXXX	706 374-XXXX	0.1
COMCAST PHONE OF GEORGIA, LLC - GA	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/28/2011	706 738-XXXX	706 632-XXXX	2.5
LEVEL 3 COMMUNICATIONS. LLC - SC	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/7/2011	706 738-XXXX	706 632-XXXX	0.2
BANDWIDTH.COM - GA	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/29/2011	706 751-XXXX	706 632-XXXX	3.4
BANDWIDTH.COM - GA	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/29/2011	706 751-XXXX	706 632-XXXX	0.4
BANDWIDTH.COM - GA	CLEC	442	346	I-LEC	BLUE RIDGE TEL CO	438	429F	5/9/2011	706 751-XXXX	706 632-XXXX	0.5

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- * Halo claimed that only traffic destined to telephone exchange in the same MTA in which the tower resides is accepted for termination over this link; all other traffic is routed to an IXC for handling, and exchange access charges are paid is simply false and misleading.



InterMTA CMRS Traffic

Delivered via Local Interconnection

not via IXC as Halo claims

Orig Telephone	Orig MTA	Term Telephone	Term MTA	MOU	PortPS OCN	PortPS OCN Name
229 232-XXXX	37	706 632-XXXX	11	37.2	NEXTEL 6232	COMMUNICATIONS, INC.
229 379-XXXX	37	706 374-XXXX	11	18.4	ALLIED WIRELESS COMMUNICATIONS LLC 6298	DBA ALLTEL - GA
229 403-XXXX	37	706 632-XXXX	11	32.3	ALLIED WIRELESS COMMUNICATIONS LLC 6298	DBA ALLTEL - GA
229 561-XXXX	37	706 258-XXXX	11	7.7	CELLCO PARTNERSHIP DBA 6540	VERIZON WIRELESS - GA
229 563-XXXX	37	706 374-XXXX	11	28.7	CELLCO PARTNERSHIP DBA 6540	VERIZON WIRELESS - GA
229 630-XXXX	37	706 374-XXXX	11	9.4	NEW CINGULAR WIRELESS 6214	PCS, LLC - GA
850 621-XXXX	17	706 632-XXXX	11	5.3	NEW CINGULAR WIRELESS 6214	PCS, LLC - GA
305 951-XXXX	15	706 374-XXXX	11	41.8	NEW CINGULAR WIRELESS 6214	PCS, LLC - GA
817 798-XXXX	7	706 632-XXXX	11	8.3	NEW CINGULAR WIRELESS 6534	PCS, LLC - IL

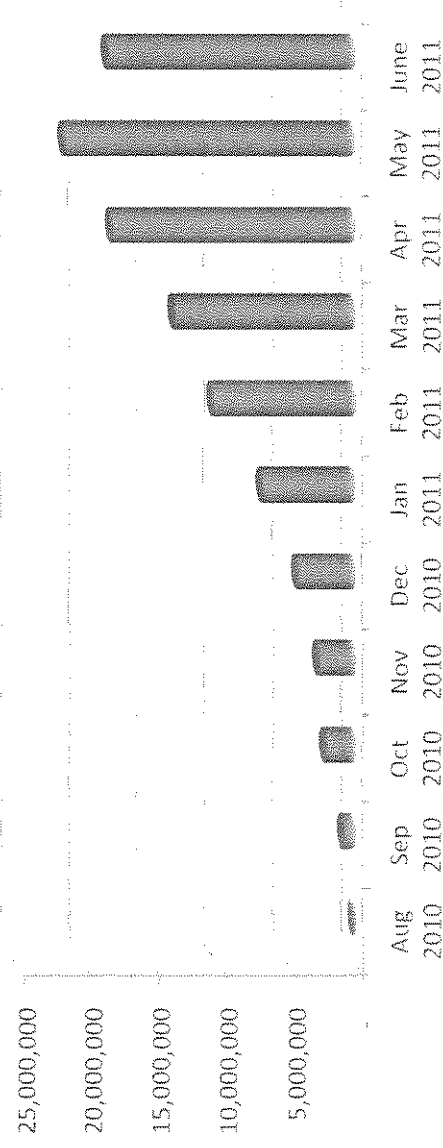
NECA Study



CMKS Dispute Data Collection

- Issued to NECA Pool participants In July 2011
 - 169 respondents
 - Several NECA pool members declined to respond to this survey citing current litigation with Halo Wireless
 - 118 million terminating MOU attributed to Halo

Halo Monthly Usage (MOU)



July 2011 contained only partial month data and has been excluded from this chart.
Some respondents did not provide a monthly breakout. Their data is excluded from this chart.

Legal Issues



HALO'S SERVICE IS NOT PRESUMPTIVELY CMRS

- The Commission licenses 3650-3700 MHz service on a free, non-exclusive basis. Licensees may choose to provide private or common carrier radio services. 47 CFR § 90.1309.
- In adopting this rule, the Commission stated that the type of service actually provided will determine the regulatory classification and obligations of the licensee. *In the Matter of Wireless Operations in the 3650-3700 MHz Band* (2005).
- Halo may, in fact, use its 3650-3700 MHz license to provide CMRS service or not. The nature of the service actually provided by Halo, rather than Halo's characterization of that service, determine whether or not it qualifies as CMRS.

CALLING JURISDICTION IS DETERMINED BY ORIGINATION/

TERMINATION POINTS

- The foundation of call rating and billing is the Commission's post-divestiture principle that the origin and destination points of a call, as measured by the telephone number locations, determine whether the call is interstate or intrastate for purposes of assessing switched access charges. *MCI Telecommunications* (1985). TDS' interstate and intrastate tariffs references the same language.
- This same methodology applies to wireless-originated traffic. The Commission directed, in 1996, that this same methodology (end to end based upon the calling and called number) would be used for wireless traffic and it explained that the *initial* cell site or perhaps the mobile switching center could be used to determine the location a wireless call's origination. *First Local Competition Order* (1996).
- These routing and billing rules have been affirmed numerous times and have not been changed. *Intermodal Number Portability Order; VoIP Porting Decision*; and *Regulation of Prepaid Calling Card Services* (2006).

INTRASTATE ICC INVOLVING WIRELESS IS THE JURISDICTION OF THE STATES

- * The Commission has consistently acknowledged that there is a state component of wireless traffic and the states set the intercarrier compensation for such calling, even where CMRS might be involved. *North County Merits Order* 2009.
- * The full FCC fully affirmed the Enforcement Bureau Order. *North County Review Order*.
- * This ruling was affirmed in its entirety last spring by the District of Columbia Court of Appeals. *MetroPCS California, LLC v. F.C.C.*, 644 F. 2d 410, 413 (D.C. Cir. 2011).

THRIFTY CALL RULING AFFIRMS THESE POINTS

- * In a 2004 case, a long distance wholesaler (a carrier's carrier like Halo and Transcom), argued that, since the calls were handed off by the upstream carriers in Georgia, the calls were rated as if the calls were originated in Georgia. *Thrifty Call* (2004).
- * The terminating company (like TDS Telecom here) filed suit before the state commission to collect intrastate access charges on intrastate toll calls regardless of whether the call was routed through Georgia or not. The North Carolina Commission determined that "the traffic at issue is intrastate if it originates and terminates in North Carolina or if it 'enters a customer network' in North Carolina and terminates in North Carolina.
- * The Commission both affirmed that the state was the proper jurisdiction to bring such a complaint and the North Carolina Commission ruling on the merits, when Thrifty Call brought a subsequent request for declaratory ruling.

TECHNOLOGY IN THE MIDDLE DOES NOT AFFECT THESE RATING AND BILLING PRINCIPALS

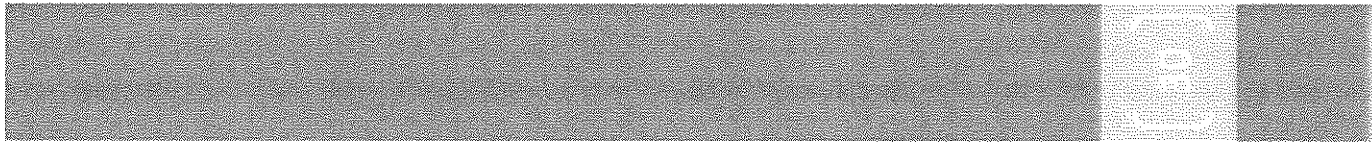
- * The technology in the middle of a call does not change its nature for billing purposes either.
- * The Commission rejected AT&T's declaratory petition, concluding that AT&T's specific service was a telecommunications service since customers obtained only voice transmission with no net protocol conversion and thus subject to terminating access charges. *AT&T IP-in-the-Middle Decision* (2004).

TRANSCOM IS NOT AN ESP

- * Transcom and Halo claim that all of the long distance traffic delivered is “enhanced” by Transcom and, therefore, is exempt from terminating access charges.
- * The “enhanced” service designation does *not* apply to services that merely “facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service.” *AT&T Calling Card Decision* (2005).
- * In Transcom’s case, the enhancement does not, from the end user’s perspective, “alter the fundamental character” of the telephone service - the service remains a “telecommunications service,” regardless of whether the technical definition of an “enhanced” service. *AT&T 900 Dial-It Services* (1989).
- * Transcom provides no end user services and the claim to enhance that call is frivolous.

AS A TELECOMMUNICATIONS PROVIDER, ENHANCEMENTS DON'T AFFECT HALO'S OBLIGATIONS

- Even if Transcom were enhancing the traffic, it does not matter as to Halo.
- Under the precedent of the *Time Warner Declaratory Ruling* (2007), the fact that the content may be enhanced upstream by someone else does not change the telecommunication nature of Halo's delivery.
- As the Commission further ruled in its *Time Warner Declaratory Ruling*, access payments are due regardless of and upstream enhancements (in that case, the originating technology).
- Like the wholesale CLECs, Halo has obtained an interconnection agreement with AT&T (and indirect delivery access to TDS Telecom) on the basis that it is a telecommunications carrier.
- Having gained these rights, it cannot now claim that the traffic is not telecommunications and deny the payment of access charges.



THANK YOU