BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	:	
COMPLAINT OF	:	
CONCORD TELEPHONE EXCHANGE, INC.,	:	
HUMPHREYS COUNTY TELEPHONE	:	
COMPANY, TELLICO TELEPHONE	:	
COMPANY, TENNESSEE TELEPHONE	:	
COMPANY, CROCKETT TELEPHONE	:	DOCKET NO.: 1100108
COMPANY, INC. PEOPLES TELEPHONE	:	
COMPANY, WEST TENNESSEE	:	
TELEPHONE COMPANY, INC., NORTH	:	
CENTRAL TELEPHONE COOP., INC. AND	:	
HIGHLAND TELEPHONE COOPERATIVE,	:	
INC. AGAINST HALO WIRELESS, INC.,	:	
TRANSCOM ENHANCED SERVICES, INC.	:	
AND OTHER AFFILIATES FOR FAILURE	:	
TO PAY TERMINATING INTRASTATE	:	
ACCESS CHARGES FOR TRAFFIC AND	:	
OTHER RELIEF AND AUTHORITY TO	:	
CEASE TERMINATION OF TRAFFIC	:	

PRE-FILED DIRECT TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

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PRE-FILED DIRECT TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

Q: Please state your name, title and business address.

A: My name is Russ Wiseman. I am Chief Operating Officer for Halo Wireless, Inc. ("Halo"). My business address is 2351 W. Northwest Highway, Suite 1204, Dallas, TX 75220. I am responsible for all operations at Halo, including sales, marketing, network and system operations, and inter carrier relations.

Q: Please state your educational background and experience.

A: I received an MBA in International Finance from Fordham University Graduate School of Business, New York, N.Y. in 1991. Before then I obtained a Bachelor of Electrical Engineering from Manhattan College School of Engineering, New York, N.Y., in 1986.

My prior work experience, from most recent (prior to being engaged by Halo):

From 2003 to 2010 I was the principal in RA Wiseman & Associates. I performed management consulting, specializing in strategic business and market planning, product and service development, and complex program management in technology-based industries. This included engagements with wireless, cable and other ventures, with particular emphasis on implementing business plans for providers and companies that integrate Internet, voice communications and video services or applications with other business operations. Between 2000 and 2002 I worked for Nucentrix Broadband Networks as the Senior Vice President – Internet Operations. As part of those responsibilities, I helped the company develop and implement its wireless broadband services using MMDS in small to medium sized markets. From 1999 to 2000 I was Executive Vice President/Chief Operating Officer for Flashnet Communications, Inc., prior to their ultimate sale to Prodigy and then AT&T. From 1997 to 1999 I was Chief Marketing Officer/VP Strategic Planning for PrimeCo Personal Communications, where I managed a strategic planning, corporate marketing and pre paid services staff of 60 people responsible for strategic planning, corporate development, product development, product management, pricing strategy, promotions planning, market research and planning and competitor analysis. From 1992 through 1997 I was Managing Consultant/Practice Leader - Communications and Multimedia Practice - U.S. Consulting for PA Consulting Group, and was charged with bringing communications industry breadth and depth to the company. Domestic and international engagements focused on strategic business and market planning, product and service development, and complex program management.

From 1986 through 1992 I worked for Verizon Communications, first as Engineer - Central Office Design & Engineering, where I designed and implemented fiber optic/SONET and digital switching networks in the NYC and Mid State regions. Beginning in 1990, I was Staff

Director, Corporate Planning. My duties included identifying, analyzing and recommending major business initiatives in communications, software and services industries. I was involved in M&A assessments for the purchase and sale of applications software and IT services businesses, including the assessment and ultimate sale of NYNEX Mobile to Bell Atlantic Mobile.

Q: Are you an attorney?

A: No.

Q: On whose behalf are you appearing?

A: I am appearing for the Halo Wireless, Inc. ("Halo").

HALO'S FCC LICENSE

Q: Is Halo licensed by the FCC?

A: Halo received a "Radio Station Authorization" from the FCC which I understand allows it to operate as a "common carrier" and operate stations in the "3650-3700" MHz band. I have attached this RSA as Wiseman Direct Exhibit 1.

Q: Has Halo registered specific 3650-3700 base stations that serve within any Major Trading Area ("MTA") covering Tennessee?

A: Yes. The following table lists the base stations that have completed registrations in the FCC's Universal Licensing System:

Base Station Location	Associated MTA	State(s) served
Cartersville, GA	11 – Atlanta	GA, SC, TN, AL
Gainseboro, TN	43 – Nashville	TN, KY
Amherst, TN	44 - Knoxville	TN, KY

Q: Has Halo established other base stations in other parts of the United States?

A: Yes. Halo has 28 total registered base stations, so there are 25 others that do not serve any portion of Tennessee.

INDIRECT INTERCONNECTION ARCHITECTURE WITH COMPLAINANTS

Q: Is Halo interconnected with AT&T within Tennessee?

A: Yes. Halo has established interconnection with AT&T in 4 of the 5 LATAs that have Tennessee territory. MTA boundaries do not correspond with LATA boundaries and are usually much larger that LATAs. You may have a single LATA that is part of two or more MTAs, or you may have an MTA that includes two or more LATAs. Further, an MTA quite often crosses state boundaries. MTA 11 is a good example: it covers parts of Alabama, Georgia, and South Carolina as well as a portion of Tennessee.

MTA 11 includes all or parts of LATAs 434, 436, 438, 440, 442, 444, 446, 472, and 478, of which 472 (Chattanooga) is in Tennessee. To handle calls originating from our end user customers that have established connectivity with our Cartersville, Georgia base station, or to handle calls originating from other carriers' end user customers in LATA 472, we have established interconnection at AT&T's CHTGTNNS84T tandem.

MTA 43 includes all or parts of the 464, 468 and 470 LATAs, of which 468 (Memphis) and 470 (Nashville) are in Tennessee. To handle calls originating from our end user customers that have established connectivity with our Gainseboro, Tennessee base station, or to handle calls originating from other carriers' end user customers in LATA 468, we have established interconnection at AT&T's MMPHTNMA84T tandem. For LATA 470, we have established interconnection at AT&T's NSVLTNWM92T tandem.

MTA 44 includes all or parts of the 466, 470 and 474 LATAs, of which 470 (Nashville) and 474 (Knoxville) are in Tennessee. To handle calls originating from our end user customers

that have established connectivity with our Amherst, Tennessee base station, or to handle calls originating from other carriers' end user customers in LATA 470, we have established interconnection at AT&T's NSVLTNWM92T tandem.. For LATA 474 we have established interconnection at AT&T's KNVLTNMA84T tandem.

To put it another way, Halo has interconnection with AT&T in the following Tennessee LATAs: Chattanooga (LATA 472[1]), Knoxville (LATA 474[2]), Memphis (LATA 468[3]) and Nashville (LATA 470[4]). We do not have interconnection in the Bristol LATA (LATA 956).

HALO'S SERVICES

Q: Does Halo provide "commercial mobile services," "unlicensed wireless services," and/or "common carrier wireless exchange access services"?

A: I am not a lawyer, but on the advice of counsel and the service definitions in § 332(c)(7)(C), Halo takes the position that its services are "licensed" under these provisions. My non-legal understanding is that Halo provides commercial mobile services. It is also my understanding that if and when Halo carries a call to or from an "Interexchange Carrier" ("IXC") providing "telephone toll service," Halo would be providing "common carrier wireless exchange access service" as I believe that term is used in § 332(c)(7). On the advice of counsel, our position is that our 3650 authority is a "licensed" service. If this position proves incorrect, then our understanding would be that our services would be considered "unlicensed wireless services" on the basis that we offer "telecommunications services using duly authorized devices which do not require individual licenses." Regardless, we still assert it is CMRS.

Q: Does Halo provide "telephone toll service"?

[1] Halo secured a 1,000 block of numbers (423-486-1) in this LATA.
[2] Halo secured a 1,000 block of numbers (865-321-1) in this LATA.
[3] Halo secured a 1,000 block of numbers (901-736-1) in this LATA.
[4] Halo secured a 1,000 block of numbers (615-200-1) in this LATA.

A: Again, I am not a lawyer. Our counsel has advised me that the Communications Act § 153(48) defines "telephone toll service" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." I have also been advised that for CMRS purposes, the "Major Trading Area" ("MTA") is the relevant "exchange." As I will explain below, all of the communications in Tennessee enter Halo's network as the result of an "end user's" "wireless station" *originating* a communication with a Halo base station in a specific MTA. All of these communications are delivered for termination to a "station" in the same MTA as Halo's originating end user's wireless station. Halo does not transport communications between MTAs for any traffic that uses interconnection. Therefore, none of the traffic in issue is "between exchanges." Based on these facts, Halo asserts that its services do not fall within the definition of "telephone toll service."

Halo is not acting as an IXC for the calls in issue because Halo is not providing "telephone toll" as a part of any such call. None of the calls in issue fit the limited circumstances under which a CMRS provider is deemed to be providing telephone toll service and thus potentially subject to access charges.[5]

Q: You mentioned your base stations. What functions to they perform?

Halo's base stations are the wireless access points where it collects and delivers voice and data traffic from end-user customers who purchase wireless services from Halo. These wireless customers also purchase or lease wireless CPE (a customer-owned or leased "station") that when sufficiently proximate to a base station allows them to communicate wirelessly with that base station. The end user customer can then originate telecommunications within the MTA.

[5] On the advice of counsel, Halo relies on: *Local Competition Order* ¶ 1043 and note 2485.

Under the Halo configuration, and with respect to voice services, only calls coming from customers connected to a base station in an MTA, and where the called numbers are also associated with a "rate center" within the same MTA, will be routed over the AT&T interconnection trunks for transport and termination in the same MTA. The service architecture supporting Transcom is designed so that any communication addressed to a different MTA would fail, *e.g.*, not complete.

Halo also has a "consumer" product that allows calls received by Halo from customers connecting to a base station within an MTA destined to a called party in a different MTA to be completed. The consumer product allows calls to and from Halo customers not accessing the Halo network at a base station access point (*e.g.*, customers accessing their voice services over another broadband Internet connection) to be completed. These calls, however, *are not* routed over the AT&T interconnection trunks. Rather, those calls are handled by Halo's IXC service provider, and that IXC provider pays all access charges that are due. In other words, when a local exchange carrier ("LEC") receives a Halo call for termination in an MTA, the call a) will have been originated by an end user customer's wireless equipment communicating with the base station in that same MTA, and b) will by design and default, be intraMTA as defined by the FCC's rules and its decision that the originating point for CMRS traffic is the base station serving the CMRS customer.

Q: Does Halo have any consumer customers in Tennessee?

A: Halo has expended considerable sums developing its consumer product. We engaged a marketing firm and developed a media strategy. I have personally walked down streets meeting with potential customers. Much of our time and early efforts were devoted to identifying consumer needs and seeking how our product could meet those needs.

We were on the verge of rolling out the product when all of the ILECs began their multi-state attack. Since that began last year our ability to run the business and conduct marketing has been seriously hobbled by the ILECs' onslaught. We can't grow the business if we are spending most of our time and free cash flow engulfed in legal proceedings. The cost of the proceedings has consumed all of the cash we were spending, and planned to spend on retail marketing.

Nonetheless, we do have one other customer that is using our basic product. The listed service address is in Brentwood, Tennessee, outside of Nashville. We have not altered our intent to gain more consumer customers and provide broadband service to rural Tennessee residents. In fact, we recently received notice that the USB Wi-Max dongle we've been pushing our vendor for over a year to deliver has finally been approved by the FCC and absent all this litigation we would be expanding our marketing to consumers. We continue to work on gaining more customers even with our limited available resources.

Q: What service areas have you targeted?

A: Halo has specifically targeted rural areas for its coverage areas.

Q: What market is targeted by Halo's "consumer-oriented" service offerings?

A: Consumers and small business in rural towns, where their choice of broadband provider is limited, the services offered limited, and/or where prices they pay generally high.

Q: How can Halo's business model meet the needs of these markets?

A: Halo's High Volume service offering requires the deployment of base stations in cities located in MTAs. By selecting small towns underserved by incumbent operators for the deployment of these base stations, Halo can leverage common infrastructure to provide wireless broadband voice and data services on a scale, and at a price other operators simply cannot because they must derive a return on investment from only one market, where we serve two. .I

will point out that our detractors have claimed that Halo does not serve, and has no intention of serving, “retail” wireless customers. If this were true, I can tell you as an operator, it would make no sense to deploy base stations in rural locations. These sites are generally remote, hard to get to, and backhaul services are limited and expensive, to name just a few challenges. If we had no intention of serving the people in these communities, we undoubtedly increased operational complexity and increased operating costs in a material way by deploying where we did.

Q: Does Halo have “retail” customers now?

A: If by “retail” you mean individual consumer customers, the answer is yes.

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. As any new service provider can attest, the lack of a brand name is a major impediment to consumer adoption. You can attempt to overcome the lack of a brand identity in many ways. One way is to commit large amounts of marketing capital to build your brand and market your service. As a competitor of Halo’s, Clearwire, has clearly demonstrated most recently, this is a strategy that only very deep pocketed companies can employ, and even then, the results can be disappointing. Clearwire’s pull back from retail marketing demonstrated that billion dollar balance sheets are not adequate to play this game. Our strategy simply recognizes that a monthly fee is a barrier to adoption. By making our price zero, we are trying to maximize the take rate, as the consumer is

generally more willing to take a risk and try your product or service, while maximizing the return on our relatively modest marketing budget by yielding the largest base of customers possible.

Q: How much has Halo invested in retail marketing to get these non-paying customers?

A: A few hundred thousand dollars.

Q: Does Halo have any agents or representatives working on retail marketing?

A: Yes, Halo has employed a Dallas-based marketing and PR agency since pre-launch to design, implement and manage our consumer-centric sales and marketing efforts. We have also hired independent direct sales people to perform local sales activities in towns where our base stations are located.

Q: Have you personally been involved in these retail marketing efforts?

A: Yes. In addition to overseeing all our strategic marketing decisions, programs and plans, I have personally spent time knocking on doors as part of our sales efforts, primarily to gain a deeper understanding of our target customers' broadband service requirements and expectations, disappointments and frustrations, and enablers and barriers to adoption.

Q: Does Halo plan to sell phones and devices?

A: Yes, as the device ecosystem supporting WiMAX technologies, especially in the 3650 band, continues to mature.

Q: Has Halo finished identifying and securing sources for all of the devices it plans to sell?

A: Not yet.

Q: Has Halo finished building out its nationwide network?

A: I would say that the radio network we have in place today is adequate to operate our current business. So expansion would be incremental, and primarily focused on the rural

consumer markets I mentioned earlier, specifically expanding the radio coverage area of existing towns we serve, and launching service in new towns. We have not done either as yet as the incremental capital we expected to generate from operations, and managements attention, has been drained by these legal fights with the ILECs.

Q: Why does Halo need a nationwide network?

A: In wireless services, coverage is king. Coverage is what customers of wireless services expect. The more coverage you have as an operator, the easier it is to compete, build and sustain a profitable customer base, and deliver the value customers of wireless services expect.

RELATIONSHIP WITH TRANSCOM

Q. What is Halo's relationship with Transcom?

A. One of customer and vendor, with each party serving in both roles, but for different services. As a vendor to Transcom (Transom as customer to Halo), Halo provides certain telecommunications services to Transcom, with Halo serving as a provider of common carrier CMRS services. Transcom purchases these CMRS services – which we call "High Volume" services – in the form of a "wireless telephone exchange service."[6] Transcom has represented to Halo that it is an enhanced/information service provider. We have been provided four separate federal court decisions that so hold. We are relying on our customer's representation and those decisions as the basis for our belief and understanding that Transcom is using the telephone

[6] I am advised that "telephone exchange service" is defined in Communications Act § 153(47):

> (47) TELEPHONE EXCHANGE SERVICE.--The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

exchange service it purchases from Halo as an input to its enhanced services. I am informed that under the Act and FCC rules, ESPs are not carriers and are instead end users.

As a customer of Transcom, Halo purchases certain core IP services, such as soft-switch capacity, media gateway ports, and IP bandwidth.

Q. Are you familiar with the court decisions rendered by Judges Hale and Felsenthal regarding Transcom's status as an ESP?

A. I have reviewed them.

Q. What do you understand are the implications and ramifications of these decisions on Halo and Transcom with respect to the service Halo sells to Transcom?

A. Based on advice of counsel, my understanding of these decisions is that they establish Transcom as an Enhanced Service Provider ("ESP"), and that as such, Transcom is, to Halo, an "end user" purchaser of Halo's common carrier telecommunication services. Furthermore, my understanding from these decisions and counsel is that when ESPs purchase services from a common carrier like Halo, access charges are not due on their traffic. Instead, the ESP purchases "telephone exchange service."

Going into further detail on this, it is our understanding that Transcom's operations have been reviewed by a federal court with jurisdiction to determine if Transcom is an ESP, and that on several occasions these courts affirmed that Transcom is indeed an ESP. Specifically, in *In re Transcom Enhanced Services, LLC* (the "Hale Opinion"), (Exhibit 2), the court held that Transcom does not provide telecommunications, and is an Enhanced Service Provider ("ESP"). The Hale Opinion concluded that "a service that routinely changes either the form or the content of the transmission would fall outside of the definition of 'telecommunications' and therefore would not constitute a 'telecommunications service.'" See Exhibit 2, pg. 6. On the basis that

Transcom's operations necessarily result in a change in content and often a net change in form, the Hale Opinion concluded that Transcom is an ESP. The Hale Opinion further posited that Transcom has never held itself out as a common carrier and there is no legal compulsion that Transcom operate or hold out as a common carrier.

Our understanding of the Hale Opinion is that AT&T and SBC contended that Transcom's service was similar to the service addressed by the FCC in the "IP-in-the-Middle" decision. However, our understanding of the Hale Opinion is that it rejected that argument and held that the service provided by Transcom is "distinguishable from AT&T's specific service in a number of material ways," and it goes on to list some of the distinctions.

Our understanding is that the Hale Opinion went on to hold that Transcom's service "fits squarely within the definitions of 'enhanced service' and 'information service' . . . and falls outside of the definition of 'telecommunications service' because [Transcom's] system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication." Our understanding of the Hale Opinion is that it further held that Transcom's service "is not a 'telecommunications service' subject to access charges, but rather is an information service and an enhanced service that must pay end user charges."

I have been advised by counsel that the Hale Opinion was later vacated on grounds of mootness, but Judge Hale entered similar findings and rulings in the final Confirmation Order of Transcom's bankruptcy proceedings (Exhibit 3). See paragraph 4. Also, we understand that Judge Hale entered summary judgment in Transcom's favor in an adversary proceeding, and that summary judgment reiterated all of the findings made in the Hale Opinion (Exhibit 4). In addition, we understand that Transcom started its operations by purchasing the assets of a company called DataVon out of DataVon's bankruptcy, and the bankruptcy judge in that matter,

Judge Felsenthal, made similar findings about the service provided by DataVon that Transcom was purchasing (Exhibit 5).

Q. Has Transcom made any representations to Halo regarding its status as an ESP and treatment as an "end user" based on these decisions?

A. Transcom has represented to Halo that since the issuance of the Hale and Felsenthal decisions, there has been no change in any of the relevant facts regarding its operations or services, which were determined to constitute enhanced/information services in those decisions. Transcom has further represented to Halo that its current business operations depend on these decisions confirming its status as an ESP and treatment as an "end user" under applicable FCC rules.

Q: Is Transcom licensed by the FCC?

A: Not in the sense that they obtain an individual written "authorization." As discussed above, we believe that judicial precedents have established Transcom as an ESP. It is my understanding that the FCC does not "license" ESPs. Instead, counsel has advised me that the FCC "authorized" ESPs to freely enter and exit the market. Counsel has also advised me that that the FCC prohibited states from regulating or supervising ESPs under common carrier or any other economic regulation, except to the extent the ESP is *also* a carrier and its ESP activities are **wholly** intrastate.[7]

Q: Does Halo rely on Transcom's representations that it is an ESP and is treated as an "end user"?

[7] On the advice of counsel, Halo relies on: *California v. FCC*, 905 F.2d 1217, 1239 (9th Cir. 1990) (affirming FCC preemption of state regulation over non-carrier ESPs); *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995) (affirming FCC preemption of state regulations relating to common carriers' ESP activities unless they are "purely" intrastate).

A: Transcom has supplied Halo's counsel with four separate federal court opinions directly holding that it is an "Enhanced Service Provider."[8] Based on the advice of counsel, Halo relies on Transcom's representations and the decisions of Judges Hale and Felsenthal. Halo's counsel's interpretation of these decisions is that Transcom is not an IXC and is instead an "end user." Halo's counsel's interpretation is that these decisions establish that Transcom is not subject to "exchange access"[9] but is instead allowed to buy "telephone exchange service." Counsel has advised me that under the FCC's rules, as well as the federal statute, only IXCs must buy "exchange access" and if the customer is an "end user" then the applicable service definition is "telephone exchange service."

From a Halo perspective, and in reliance on the Hale and Felsenthal decisions, and the advice of Halo counsel, we believe we are providing "telephone exchange service" to an "end user" that is entirely within an "exchange" (here the MTA) insofar as interconnection is involved. We also believe the end user customer (Transcom) purchasing telephone exchange service in the form of Halo's High Volume service is an ESP/ISP. Halo's counsel has advised me that the courts have recognized that an ESP/ISP is "simply a communications-intensive business end user" even though the ESP/ISP may receive calls that started on other networks. Counsel has also advised that the ESP/ISP status is preserved when "upon receiving a call" the ESP/ISP proceeds to "originate further communications."[10]

[8] I will use "ESP" as a short-hand reference, since that is the terminology used in the four decisions. My understanding is that the statutory definition is "information service" provider and the reference to an "ISP" is synonymous with "ESP."

[9] *See* Communications Act § 153(16):

> EXCHANGE ACCESS.--The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

[10] Halo relies on: *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 5-9 (D.C. Cir, 2000).

Halo is relying on these four opinions, and I believe this reliance is reasonable. We do not think those decisions are wrong – to the contrary we agree with them. But it does not seem fair to me to condemn either Halo or Transcom for relying on decisions by two federal judges even if a state commission may later decide to overrule these courts. I certainly do not think it would be reasonable or fair to infer or find some kind of fraudulent or illicit activity. Neither Halo nor Transcom should be made to suffer any penalty or condemnation as a consequence of relying on four court decisions that are directly on point and specifically involved Transcom.

Q: Do you admit that some of the communications in issue actually started on other networks?

A: Most of the calls probably did start on other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN. Judge Hale expressly discussed the PSTN-originated traffic Transcom processed and held that Transcom is still both an ESP and an end user. Other calls probably started at IP-based end-points. Halo is not in a position to determine where or on what network the call started, and we have not asked our customer.

In any event, one cannot rely on the "calling party number" as some indicator of where and on what network a call started. Numbers are not a reliable proxy for location, nor can you assume that a call from a station associated with a particular number actually started on the network of the exchange carrier that was allocated the number from NANPA.

Our contention is that it simply does not matter from a Halo perspective. Counsel advises me that ESPs have always received calls that started somewhere else. The ESP takes the call,

adds its enhanced functions and then – when necessary – secures termination from a carrier vendor by buying telephone exchange service.[11]

Based on conversations with counsel, our understanding and interpretation of Judges Hale's and Felsenthal's decisions regarding whether Transcom is an ESP is that they recognize that Transcom receives communications from its customers that started on other networks, including from LEC networks. The courts found that Transcom then processes the communication, changes the content and sometimes changes the form. Transcom then secures telephone exchange service from a carrier to arrange for final termination. My understanding is that the question in those cases was whether this meant Transcom can buy telephone exchange service or must purchase exchange access. Again, our view based on the advice of Halo counsel is that all four decisions hold that Transcom is exempt from exchange access and is an end user qualified to purchase telephone exchange service.

Halo is a common carrier. I am advised by counsel that as such, Halo has a legal obligation to offer service to any customer that fits a service definition. If and when a "communications intensive" end user business customer – including even another ESP – applies for High Volume service, we will provide the service on nondiscriminatory terms.

Our position is that it is not appropriate to independently and unilaterally decide to reject or challenge the status of an entity seeking to obtain telecommunications service when that entity comes forward with *four federal court orders* that directly establish that customer's regulatory classification.

[11] The incumbents incessantly assert that the ESP Exemption only applies "only" for calls "from" an ESP customer "to" the ESP. Counsel advises this is flatly untrue. ESPs "may use incumbent LEC facilities to originate and terminate interstate calls[.]" *See* NPRM, *In the Matter of Access Charge Reform*, 11 FCC Rcd 21354, 21478 (FCC 1996). The FCC itself has consistently recognized that ESPs – as end users – "originate" traffic even when they received the call from some other end-point. That is the purpose of the FCC's finding that ESPs systems operate much like traditional "leaky PBXs."

Q: What is your reaction to all of the telephone companies' vigorous assertions that the calls in issue "really" originated on other networks?

My reaction is that while the initial location of a call session initiation may be relevant to jurisdiction based on the "end-to-end" theory, we do not believe it is determinative to call rating for our CMRS traffic. We operate according to the rules of CMRS carriers, where traffic is originated by end users using wireless stations capable of movement at towers located in MTAs.

If the LECs are using the calling party number to identify the "originating network" our position is this is not a reliable way to determine the starting location of a call, or the carrier network that the call started on. Consequently, it seems to me that any inter-carrier compensation regime founded on the assumption that you can definitively determine the starting point of a call is fundamentally flawed and subject to the very outcomes the LECs want to avoid: gaming and arbitrage. The fact of the matter is, wireline and wireless networks and services are converging, rapidly, and in ways that blur the traditional, once clear distinctions of wireless and wireline. Allow me to provide a few examples.

Carriers like T-Mobile offer services today that allow their wireless users to originate calls using wireless base stations connected to wired broadband networks. Are calls using these devices wireless or wireline orginated? Is this traffic subject to reciprocal compensation, or subject to access?

Verizon Wireless offers Home Phone Connect, a service that allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network. Is this a mobile wireless service? Fixed wireless? Wireline? Is this traffic subject to reciprocal compensation, or subject to access? Would calls from a ported landline number be viewed by a terminating LEC as a wireless call or a wireline call? We suspect the

latter as the CPN would be a landline telephone number. But these calls would all traverse the VZW wireless network.

A growing trend today with smart phones is that wireless users today can use Skype or GoogleVoice service as an application on a smart phone. Skype and GoogleVoice quite often obtain numbers from CLEC "numbering partners" such as Level 3 or Bandwidth.com. Let's assume the numbering partner is Bandwidth.com. An AT&T Wireless customer can originate a call while traveling in California using Skype on an AT&T-provided wireless smart phone. In this example Skype has sub-assigned a number 865-219-3111[12] to the AT&T Wireless user. The Skype user's outbound call, let's say to a PSTN user served by a local exchange carrier such as AT&T, probably will not go out over Bandwidth.com's network, even though Bandwidth.com's number will be signaled. It will be completed over AT&T Wireless's IP network and then go to Skype's network and then be routed to a Skype vendor to start the termination chain. The call, however, will appear to the AT&T LEC as a wireline originated call, since the Calling Party Number is a "wireline" number. The ILECs would claim this call started "on the PSTN" in Knoxville and Bandwidth.com was the "originating LEC." However, those inferences would be incorrect. Since a smart phone was used, it would be "wireless." It started in California, not Tennessee. Bandwidth.com probably never touched the call at all in any way. Finally it would be an IP-originated call and did not "originate on the PSTN."

If the smart phone toting Skype user in California was calling someone in Tennessee within MTA 44 and LATA 474, our ESP end user Transcom could very well receive it from one of its customers that have contracted with Skype. If so, Transcom would process the call and hand it to Halo via Transcom's wireless CPE that is communicating with our Amherst,

[12] This number is within the 865-219-3 "thousands block." Bandwidth.com has that block. It is associated with the Knoxville, Tennessee rate center in L:ATA 474.

Tennessee base station. Halo would hand the call off to AT&T at its KNVLTNMA84T tandem. AT&T would then terminate or transit the call to the terminating carrier.

The ILECs would probably "rate" this as an intraMTA, intraLATA call, because they would see it as a Knoxville number calling a user within the same MTA, but they would probably claim it is "wireline" PSTN originated and therefore Halo is not "authorized" to handle it, as the number is a wireline number. We would agree it is intraMTA because we received it from our end user customer at our base station in MTA 44 and it terminated in MTA 44. We would strongly disagree that it was "wireline" PSTN originated.

For a converged IP service provider such as Halo, the starting network or the type of number used simply does not matter. And even if it did, there is no way for us to definitively determine where a call started, for the same reasons as mentioned above. Trying to maintain this distinction is fighting a losing battle, and swimming against the strong tide of market, technical and regulatory evolution occurring in the telecommunications industry.

Halo has an end user with a wireless station in each MTA. The end user customer's wireless station ***originates*** a communication in that MTA, and all of the communications in issue terminate in the same MTA. The "origination" by Transcom in the MTA could well be the "**origination** of a *further* communication" rather than the actual starting end-point but from an intercarrier compensation perspective the calls originate on our network.

Halo does recognize that the actual starting point is relevant to an "end to end" test for jurisdiction. However, based on the advice of counsel, we believe this does not matter from a Halo perspective since the call is still subject to reciprocal compensation. Counsel advises that the federal courts have on several occasions directly held that the "end-to-end" theory is relevant to jurisdiction, but it "is not dispositive" of the intercarrier compensation that applies. Our

contention, based on a careful consideration of the relevant regulations, is that the "jurisdiction" of a call is a separate question from whether "reciprocal compensation" or "access charges" are due on that call.[13]

Halo and Transcom are related companies. But Halo must still operate under the rules applicable to common carriers. We cannot interfere with or discriminate based on what our end user customer is doing on its side before our end user customer ***originates*** (further or otherwise) an end user call in an MTA.[14] We believe all that matters is whether our traffic comes to us from an end user employing a CMRS-based wireless facility in the same MTA.

Q: The ILECs assert that the true focus is on the party that started the communication before it reached Transcom. Do you agree?

A: No. Halo has an end user customer (Transcom) that is using wireless equipment in the MTA to originate calls. When the call starts somewhere else before it gets to Transcom, Transcom adds its enhanced functions and then originates a communication (or, in the words of the D.C. Circuit in *Bell Atlantic* "originates a further communication") to Halo through its end user wireless station. The communication is initiated using Transcom's wireless CPE, which is connected using our 3650 spectrum to Halo's "wireless transmitting and receiving facilities."

[13] On the advice of counsel, Halo relies on: *Bell Atlantic*, 206 F.3d at 5-6, 8, and Order on Remand and R&O and Order and FNPRM, *High Cost Universal Service Reform, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering. Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, ¶ 22, 24 FCC Rcd 6475, 6485-86 (2008) (emphasis added):

> "22. Our result today is consistent with the D.C. Circuit's opinion in *Bell Atlantic*, which concluded that the jurisdictional nature of traffic is not dispositive of whether reciprocal compensation is owed under section 251(b)(5). It is also consistent with the D.C. Circuit's *WorldCom* decision, in which the court rejected the Commission's view *that section 251(g)* excluded ISP-bound traffic from the scope of *section 251(b)(5)*, but made no other findings.

[14] An ILEC that is selling a private line to the end user customer might have reason to inquire whether the user is employing a "leaky PBX" in order to determine if the "leaky PBX surcharge" applies, but we are not a LEC.

Transcom is indeed originating the call. Counsel advises that this is a straightforward application of the "contamination" doctrine.[15]

Q: If we assume that Judges Hale and Felsenthal were correct, and if all of the traffic that traverses interconnection is originated by an end user in the MTA, what is your understanding of the "intercarrier compensation" for the end-user originated calls from Halo that the telephone companies terminate?

A: My understanding is that the calls are "non-access" for purposes of 47 C.F.R. § 20.11(b) and (d). If Transcom is "exempt" from access charges like Judges Hale and Felsenthal ruled, that logically follows. If Halo is providing intraMTA service to Transcom, given that Transcom is "originating" the communications in the same MTA, then I believe that the traffic is "non-access" under 47 C.F.R. § 51.701(b)(2). I would also observe that since Transcom is an end user and connects to Halo using IP-based equipment, it would also qualify as "non-access" under 47 C.F.R. § 51.702(b)(3).

HALO'S DEALINGS WITH NON-AT&T ILECS

Q. Is Halo paying any ILECs today for termination services?

A. Yes. In fact, Halo's largest monthly operating expense is the traffic termination fees it pays AT&T. In addition, Halo is making payments to the 50+ ILECs who did choose to use the 20.11(e) remedy and are billing Halo for these services. These ILECs are being paid for traffic termination services at the interim reciprocal compensation rates set by federal or state commissions.

[15] Counsel advises that the "contamination doctrine" is explained in Memorandum Opinion and Order, *In The Matter Of Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling That AT&T's InterSpan Frame Relay Service Is a Basic Service*; DA 95-2190, ¶¶ 17-18, 10 FCC Rcd. 13,717 ¶ 17-18 (October 18, 1995), citing to Memorandum Opinion and Order, *Petitions for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide Certain Types of Protocol conversion Within Their Basic Network*, FCC 84-561 (Nov. 28, 1984) and Phase II, Report and Order, *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry*), 2 FCC Rcd 3072, 3080 (1987).

Q. Can you describe the process or means by which these payment obligations came about?

A. For the other ILECs where we are presently operating under interim reciprocal compensation arrangements, the payment obligations for traffic termination services were triggered by the ILECs submitting a valid request for interconnection under FCC rule 20.11(e). 20.11(e) defines the rules and procedures by which ILEC may request interconnection with CMRS providers. The rule states that once a CMRS provider receives a "request for interconnection," and invokes "the negotiation and arbitration procedures contained in section 252 of the Act," then the parties are to negotiate in good faith to reach agreement terms. If they cannot reach agreement then either party may seek arbitration before the state commission.

Prior to December 29, 2011 rule 20.11(e) also provided for interim compensation beginning on the date the request was received based on rates established by a state commission, or absent such, rates set by the FCC. When an ILEC also asked for interim payment Halo complied. The list below contains all ILECs with whom Halo has entered 252 negotiations.

Carrier	OCN	STATE
Windstream - Various	Multiple	Multiple
Lavaca Telephone Company	1704	AR
Lavaca Telephone Company	1704	OK
CalaverasTelephone Co.	2301	CA
Cal-Ore Telephone Co.	2311	CA
Ducor Telephone Company	2313	CA
Foresthill Telephone Co.	2318	CA
Happy Valley Telephone Company	2321	CA
Hornitos Telephone Company	2322	CA
Kerman Telephone Co.	2324	CA
Pinnacles Telephone Co.	2346	CA
The Ponderosa Telephone Co.	2332	CA
The Ponderosa Telephone Co.	2332	CA
Sierra Telephone Company, Inc.	2338	CA

The Siskiyou Telephone Company	2339	CA
Volcano Telephone Company	2343	CA
Winterhaven Telephone Company	2323	CA
Santa Rosa Telephone Cooperative	2141	OK
Santa Rosa Telephone Cooperative	2141	TX
Blanchard Telephone Company	0678	MI
Barry County Telephone Company	0676	MI
Hiawatha Telephone Company	0713	MI
Chippewa Telephone Company	0680	MI
Midway Telephone Company	0711	MI
Kaleva Telephone Company	0703	MI
Carr Telephone Company	0683	MI
Sand Creek Telephone Company	0725	MI
Ace Telephone Co. of Michigan	0704	MI
Allendale Telephone Company	0669	MI
Drenthe Telephone & Communications	0692	MI
Lennon Telephone & Communications	0708	MI
Pigeon Telephone Company	0721	MI
Drenthe Telephone & Communications	0692	MI
Lennon Telephone & Communications	0708	MI
Pigeon Telephone Company	0721	MI
Drenthe Telephone & Communications	0692	MI
Lennon Telephone & Communications	0708	MI
Pigeon Telephone Company	0721	MI
Climax Telephone Company	0688	MI
Upper Peninsula Telephone Company	0732	MI
Deerfield Farmers Telephone Company	0691	MI

Q. Did the ILECs that were paid interim compensation accept the payments without any special conditions?

A. Some did. Some did not. Some returned the checks, indicating that the payments made were not at the state-based interim rates agreed by the parties. This reason makes no sense to us since we paid them the amount they specifically listed in their "request" or we pulled the state-level order setting the price they may recover. Some ILECs have accepted these payments, but have claimed that they are accepting them only as "partial payment" against an access charge

bill. Some of them have not sent us any invoices even though we agreed to pay interim compensation.

Q. Why did Halo pay some ILECs for termination services and not others?

A. As it relates to ILECs being paid for termination services based on interim arrangements, these ILECs were being paid because they correctly followed 20.11(e) procedures and then sent us subsequent invoices. As it relates to ILECs that have sent invoices or letters seeking compensation, but where Halo has determined they have not correctly followed 20.11(e) procedures, these ILECs were not compensated because the rules governing inter carrier ILEC-CMRS compensation until December 29, 2011 stated that compensation was not due absent an ICA, or, absent an ICA, an interim compensation arrangement. As of December 29, 2011 ILECs are not entitled to interim compensation because of the FCC's rule changes.

Q: If the Complainants had used their 20.11(e) remedy would Halo have negotiated with them and paid interim compensation?

A: The Complainants could have easily used the rights the FCC gave them in 2005 when it passed 20.11(e). All that is required is a communication by letter or even e-mail stating that the ILEC wants to "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act." I cannot understand why the Complainants accuse Halo of refusing to pay when they purposefully and consciously chose to not do what the rules required. Then they blame Halo.

Q. Why didn't Halo attempt to negotiate ICAs with the Complainants prior to beginning to pass traffic?

A. Three reasons. First, as a practical matter, this is impossible given the number of ILECs across Halo's operating service territory. It would take many years to accomplish such a goal,

and this is not practical for a start up CMRS carrier. Second, it's not feasible because prior to launch, we simply don't know where our customers' traffic will have to go, so we wouldn't know with whom ICAs are needed. Third, this is simply not how the industry works to accomplish interconnection. The FCC has established rules whereby a CMRS carrier can establish its service, and use the tandem transiting capabilities of another ILEC to reach an independent telephone company. These rules are intended to foster competition, and enable the speedy entrant of new carriers into the market. Rules like 20.11(e) then gave the ILECs who want to receive compensation for traffic sent by a CMRS carrier the power to send a compliant request and begin recovering interim payments.

Q. Why do you believe the Complainants have refused to send 20.11(e) requests?

A. Because they want access, not reciprocal compensation. More important, they are not really interested in "negotiation" or "arbitration" under § 252.

Q: Does Halo want interconnection agreements with the ILECs/Movants?

A: Let me first answer that by saying that Halo does not *need* interconnection agreements with these carriers. We have ICAs with AT&T and thereby obtain indirect interconnection with the rest of the telephone companies. We are satisfied with the current situation, and in particular the "no compensation" result. That is why we have not become a requesting carrier with regard to any of them.

Based on advice of counsel, Halo relies upon the *T-Mobile* discussion regarding this issue. Based on my discussions with Halo's counsel, it is my understanding that under *T-Mobile*, if any incumbent LEC sends Halo a 47 C.F.R. § 20.11(e) "request for interconnection" that "invokes the negotiation and arbitration provisions contained in section 252 of the Act," then Halo must immediately accept such letter. We have done so several times. Each time we reply by

advising the incumbent LEC their request was compliant, and acknowledging we are in the 252 negotiation and arbitration process. We also agreed the incumbent LEC was entitled to interim compensation. After we determine the proper interim price under the FCC rules, we paid the incumbent LEC reciprocal compensation for every call that it terminates after the date of the request for interconnection when they sent us an invoice that used the interim rate.

Q: Does Halo attempt to negotiate interconnection agreement terms?

A: Yes. When we sent the acknowledgement letter, we attached our ICA template terms, as the basis for negotiations going forward. We also requested information from the telephone company that FCC rule 47 C.F.R. § 51.301(b) requires them to provide on request.

Q: How have the telephone companies responded?

A: So far, they have refused to consider our template terms. Most refuse to provide the information required by § 51.301(b). It appears that these ILEC do not "really" want to "negotiate" terms, and do not want to produce the required information under the rule. All of the negotiations have hit the same snag, centered around a completely different issue: whether Halo is "really" CMRS and whether Transcom is "really" an ESP.

Q: Did Halo offer to pay the ILECs reciprocal compensation for the reciprocal compensation traffic they terminated?

A: Yes, and we made payments. Halo's monthly expense for termination services to ILECs, including AT&T, has been roughly 40-45% of our monthly operating revenue, far and away the single largest monthly operating expense line item. This expense is 2-3 times the next highest expense category.

Q: The ILECs assert that this is really "access" traffic. What is your position?

A: If Transcom is not providing "telephone toll" and if Halo is not providing "telephone toll" then I do not see how exchange access charges can apply, particularly to Halo. Exchange access by definition applies only to telephone toll service.

Q: Let's turn to state law. Do you know whether or how Tennessee utility law defines "Interexchange access"?

A: I am informed by counsel that section 1220-4-80-01(l) defines "Interexchange Access Service" as "A telecommunications service to provide access between end users and an Interexchange carrier and/or private line services between end users."

Q: Is Halo an IXC?

A: I have already explained that with regard to the traffic that flows over the interconnection we have with AT&T we are not, because we do not provide telephone toll.

Q: Is Transcom an IXC?

A: The four decisions discussed earlier expressly say it is not.

Q: If Transcom was deemed to be an IXC for some reason what would be the result?

A: That would mean that Halo is providing exchange access to Transcom rather than telephone exchange service.

Q: Are CMRS providers allowed to provide exchange access service?

A: I am advised that CMRS providers – like local exchange carriers – can and do provide exchange access service as part of their authorized and licensed service mix. I an advised that § 332(c)(7)(C)(i) in fact specifically mentions and therefore contemplates that CMRS can provide exchange access. [16] Indeed, state are expressly preempted from acting to prohibit a wireless provider from offering wireless exchange access service.

[16] *See* 47 U.S.C. § 332(c)(7)(7)(C)(i) (defining "personal wireless service" as including "wireless exchange access services."); (47 C.F.R. § 20.15(c) (CMRS carriers may not file tariffs for, among other things, interstate

Q: If Halo is providing exchange access rather than telephone exchange service, what does that mean when Halo and other carriers such as the ILEC petitioners collaborate to terminate a call in the MTA?

A: It means that Halo is a joint access provider along with the ILECs. Under the FCC's rules that means each exchange carrier would individually send the access bill to the "access customer" under meet point billing principles.

Q: So the ILECs cannot send the access bill to Halo?

A: We disagree with the notion that this is not reciprocal compensation and Halo is not providing telephone exchange service. But regardless, Halo is clearly not providing any interMTA service even if the calls themselves are found to be interMTA. If the ILECs are so certain that the "number" defines the call type, then maybe they should send their bills to the carrier that holds the number appearing in the CPN. For Halo cannot be held responsible under any theory.

Q: Did Halo send an "Access Service Request" seeking to obtain exchange access service to any of the Complainants?

A: No.

Q: Is Halo interconnected in such a manner that it could have expected to receive exchange access services?

A: No. First, we are not directly interconnected with the Complainants. Second, we specifically designed our network so that no interMTA traffic went to the Complainants. We

access). Describing how CMRS exchange access service is handled clearly indicates it is "authorized," FCC's rules provide that CMRS exchange access service is subjected to contract, not tariff. *See* Declaratory Ruling, *In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, FCC 02-203, ¶¶ 7-15 (rel. Jul. 2002) ("*CMRS Access Charge Declaratory Ruling*"); Notice of Proposed Rulemaking, *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, 9 FCC Rcd 5408, 5447 (1994) ("*CMRS Equal Access NPRM*"); *see also* Declaratory Ruling, *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, 2 FCC Rcd 2910, 2915 (1987) ("*Cellular Interconnection Order*").

expected to have only reciprocal compensation traffic. Further, if the traffic in issue is "access" traffic Halo could not have reasonably expected to "receive" access because if this is "access" traffic on account of Transcom's regulatory classification all that means is Halo is a joint access provider along with the Complainants rather than an access customer of the Complainants. Halo is a provider, not a receiver.

Q: Did Halo take reasonable steps to prevent the receipt of access services from the Complainants?

A: Yes, for the same reasons as stated immediately above.

Q: Did Halo in fact receive access services from the Complainants?

A: No. We do not meet the definition of "customer" under their tariffs or the service definition for any of the four listed switched access feature groups.

FCC RULEMAKING ORDER

Q: The ILECs have recently begun to claim that the FCC ruled against Halo on these issues. Do you agree?

A: They cite to ¶¶ 1005-1006. Here is what those paragraphs say, including the footnotes:

> 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."[2120] It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." [2121] Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." [2122] On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. [2123] NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes. [2124] These parties thus assert that by characterizing access traffic as intraMTA

reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic.[2125] Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case." [2126]

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules.[2127] Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[2128]

[2121] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 8.
[2122] *Id.* Attach. at 9.
[2123] ERTA July 8, 2011 *Ex Parte* Letter, at 3.
[2124] NTCA July 18, 2011 *Ex Parte* Letter at 7.
[2125] NTCA July 18, 2011 *Ex Parte* Letter at 1; ERTA *Ex Parte* Letter at 1, 3 (traffic from Halo includes "millions of minutes of intrastate access, interstate access, and CMRS traffic originated by customers of other companies;" one day study of Halo traffic showed traffic was originated by customers of "176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies").
[2126] CTIA *August 3 PN* Comments at 9.
[2127] *See Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp,* Order on Reconsideration, 17 FCC Rcd 6275, 6276 para. 4 (2002) ("Answer Indiana's argument assumes that GTE North receives reciprocal compensation from the originating carrier, but our reciprocal compensation rules do not provide for such compensation to a transiting carrier."); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, [11177] n.70 (2000).
[2128] *See* NECA Sept. 23, 2011 *Ex Parte* Letter Attach. at 1; Halo Aug. 12, 2011 *Ex Parte* Letter at 9. We make no findings regarding whether any particular transiting services would in fact qualify as CMRS. *See* CTIA *August 3 PN* Comments at 9 & n.29 ("the information available does not reveal whether [Halo's] offering is a mobile service").

The meaning and result of this discussion is largely legal, and I will leave it to the lawyers to brief, including whether the discussion can be lawfully applied to traffic before December 29, 2011 and whether the FCC was addressing the topic in an adjudicatory rather than a legislative capacity.

Paragraph 1005 describes the FCC's understanding of the parties' contentions. Paragraph 1006 then presents their analysis, such as it is. They mention Halo's August 12, 2011 *Ex Parte* Letter. I am attaching that document as Attachment RW (Direct) 1. The FCC references pages 8 and 9. They attribute an assertion to Halo, however, that we did not make: we never used "re-origination." Instead, we have said that Transcom uses our service to "initiate a further communication." This is more than just semantics. If the FCC is saying that ESPs are not end users, they are not an end point for purposes of intercarrier compensation, are really carriers and IXCs and access is due from the ESP's exchange carrier when the ESP "initiate[s] a further communication" then the FCC's and the ILECs' quarrel is not really with Halo. Instead they are saying the D.C. Circuit's *Bell Atlantic* and *Worldcom* decisions were wrong when it resolved this very issue by holding that ESPs are not carriers, do not provide telephone toll and their traffic is not exchange access – even though they use telecommunications to "initiate a further communication."

The *ILECs* were the ones using "re-origination," not Halo. They should be the ones that explain whether that is different from "originate a further communication" and if it is the same why this issue is not already resolved against their position under the D.C. Circuit precedent. The FCC insisted in ¶ 958 that its order was consistent with *Bell Atlantic* and *Worldcom* so I can only assume there must be some difference between "initiate a further communication" and "re-origination."

Further, it seems to me the FCC was not really resolving the actual issue or agreeing with either side and it was clearly not adopting the Complainants' theory that access is due. The FCC did not expressly address the prescribed result when Halo's customer is in fact an end user. The FCC refused to resolve whether VoIP is a telecommunications service or an information service.

The FCC never mentioned Transcom by name and never discussed the issue of whether Transcom is or is not a carrier.

In ¶ 1006 the FCC ended up saying that if this is a "re-origination" then Halo is "providing a transiting service." Thankfully, they provided a definition of "transit" in ¶ 1311:

> 1311. Transit. Currently, transiting occurs when two carriers that are not directly interconnected exchange **non-access traffic** by routing the traffic through an intermediary carrier's network. Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. …. (emphasis added).

Since the FCC characterized Halo as providing "transit" that would mean that Halo is the "intermediary carrier" referenced in ¶ 1311. The FCC made it quite clear that *transit is non-access traffic*. Even if this traffic is not "intraMTA" it is *also* not access. That is why we continue to assert that it is "non-access" traffic. Further, the prevailing rule is that a transit provider is not responsible for termination charges: the *originating carrier* is the responsible party. Therefore even if you read ¶ 1006 the way the ILECs do, access charges cannot be applied against Halo. If the ILECs are right that Transcom is not the originating carrier, then Transcom is not responsible either.

Apparently neither side emerged unscathed. The ILECs cannot claim that the FCC rulemaking order supports their claim that Halo and Transcom are avoiding access charges – for traffic before December 29, 2011 or after that date. The ILECs need to send their bills to the carriers they claim are the actual originating carriers for this traffic.

SIGNALING ISSUES

Q: The Complaint accuses Halo of allegedly "disguising" the nature of its traffic through its signaling improprieties. What is your response?

A: I believe they are referring to Halo's practice of populating Transcom's Billing Telephone Number ("BTN") in the SS7 Charge Number ("CN") address signal. My response is that Halo is following industry and regulatory standards. We pass CPN information delivered to us unaltered in any way. We populate the CN address signal with the BTN of our end user customer in the MTA when the CPN information is different from the Charge Number information. This was done to denote the "chargeable number" for the call. There was no attempte to "disguise" anything.

Q: Have the ILECs accused Halo with manipulating "Calling Party Number"?

A: No. That is because Halo populates the address signal information that belongs in the CPN unchanged. Halo does not remove, alter or manipulate this information in any way.

Q: Some ILECs in other states have alleged that Halo is changing the address signal information in the CPN parameter. Is this true?

A: Their allegation is flatly incorrect. First of all, what they are ignoring is that Halo connects to its customers using newer technology that is not SS7-based. Thus there is no "CPN" as such. The FCC's definition of "Calling Party Number" on its face is limited to SS7-based networks.[17] We do not get SS7 "CPN" so there is nothing to change and the rules they quote simply do not apply to begin with. Our IP-based systems do, however have call control methods and protocols, and there is a location for the same type information. What Halo does is look to that location, pull out the information that belongs in an SS7 CPN parameter and then our "signaling gateway" populates that very same information in the SS7 CPN parameter. Halo

[17] Based on the advice of counsel, Halo relies on: 47 C.F.R. § 64.1600(e): "(e) Calling party number. The term 'Calling Party Number' refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network."

never populates the SS7 CPN parameter with an address signal that is different from address signal contained the equivalent IP-based information we receive from our customer. We do not change, strip, alter, modify, manipulate or do anything else to "CPN."

Q: Let's discuss "Charge Number" a little more. What is going on here?

A: My discussion above about the fact that we are an IP-based network applies here too. But setting that aside, the FCC's rules and industry practices for the SS7 Charge Number ("CN") parameter are different than for CPN. The FCC has a different definition for "Charge Number."[18] Two things are important with respect to this definition. First, it uses different terminology ("billing number") than the ANSI standard ("chargeable number"). Second, notice that the definition refers to "delivery of the calling party's billing number in a Signaling System 7 environment *by a local exchange carrier* to any interconnecting carrier …" Halo is an *exchange carrier* but it is not a *local exchange carrier*. One could fairly say the definition excludes us.[19]

Regardless, the telephone companies' contentions regarding "industry practices" are wrong to the extent they imply the practices do not allow an exchange carrier to populate an address signal in the CN where one did not exist before, or to even change it. The industry practice is to in fact do so when necessary to indicate that the end user customer's billing number ("chargeable number") is different from what might possibly be inferred from the CPN information.[20]

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[18] *See* 47 C.F.R. § 64.1600(f): "The term 'charge number' refers to the delivery of the calling party's billing number in a Signaling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users."

[19] The FCC's new rule 64.1601(a)(1) (which went into effect on November 29, 2011) may, however, apply. In pertinent part it says that "…Entities subject to this provision that use Signaling System 7 (SS7) are required to transmit the calling party number (CPN) associated with all PSTN Traffic in the SS7 ISUP (ISDN User Part) CPN field to interconnecting providers, and are required to transmit the calling party's charge number (CN) in the SS7 ISUP CN field to interconnecting providers for any PSTN Traffic where CN differs from CPN." I'm not sure how a CMRS provider can send "CN" when the applicable definition of CN expressly applies only to LECs, but I will let the lawyers debate that point.

[20] *See* ITU-T series Q.760-Q.769. ANSI T1.113 describes the CN parameter:

Q: Some of the telephone companies assert that industry practices have provided that the CN address signal must always represent a number from the first "originating network." Is that true?

A: Not according to our experts. If this were true, then it seems to me that AT&T has been violating the rules because they routinely replace the original CN or insert a new CN when one of their users has turned on "call forwarding," a call is addressed to that user from a different network, and their user has forwarded the call to a number associated with yet a third network.

Unless someone can point us to different standards that we're not familiar with, Charge Number information is not restricted to an address from only the first network. Its purpose is to designate the billing number of the carrier's end user customer. Sometimes the signaling carrier's end user customer is served by a network other than the first network, as would be the case with the call forwarding example. In our case, Transcom is our end user customer. Therefore, we signal a number we assigned to Transcom for use as the "Billing Telephone Number" for the account in that MTA, just as would an ILEC with a large business customer running a "leaky PBX." This is fully in accord with industry practices.

Q: Would the telephone companies be able to make the same signaling claims regarding the CN address signal information if Transom is an "end user" purchasing "telephone exchange service?"

A: No. While the technology is different the functionality we provide to Transcom is much like what telephone companies have provided to large "communications-intensive" business customers with PBXs for many years. Even AT&T has admitted before the bankruptcy court that the CN parameter was designed to allow presentation of a billing number associated with a

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Charge Number. Information sent in either direction indicating the chargeable number for the call and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, and address signals. (emphasis added)

business user's PBX.[21] Our CN signaling practices were carefully designed to be consistent with those applicable to a provider of telephone exchange service to a large and communications-intensive business end user.

If there was no dispute over Transcom's status, (*e.g.*, the ILECs would quit trying to re-litigate the Felsenthal and Hale decisions) none of them could contend that Halo's practices are contrary to the industry standards.

Q: When did Halo begin to populate Transcom's BTN in the CN address signal?

A: In February of 2011, soon after the FCC released its proposed "phantom signaling" rules.[22] The proposed rules expressly contemplated that CN would be populated with the number of the "responsible party."[23] In our case that is Transcom. Halo was being proactive and decided to implement the proposed rules in order to prevent allegations of supporting "phantom traffic."

Q: How did that work out for you?

A: The ILECs contended that conforming to the FCC's proposed phantom traffic rules resulted in phantom traffic. I have yet to fully understand that one.

Q: Has the FCC now promulgated final rules?

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[21] AT&T proffered testimony from its witness Neinast in the bankruptcy case. Mr. Neinast's proffer on page 19 admits that "The Charge Number (CN) field is also used in conjunction with CPN for intercarrier compensation. The Charge Number is used when a large customer with a Private Branch Exchange (PBX) desires to have all of its traffic billed to a single billing telephone number. This is an accepted practice across the industry and service providers have agreed upon billing system rules to accommodate this. When CN is used and is different from the CPN, billing systems are programmed to use the number in the CN field and to ignore the number in the CPN field.

[22] NPRM and FNPRM, *Connect America Fund et al*., WC Docket Nos. 10-90 et al., FCC 11-13, , ¶ 631 26 FCC Rcd 4554 (Feb. 9, 2011) and published at 76 Fed. Reg. 11632 (March 2, 2011).

[23] *See* Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support*, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, ¶ 719, __ FCC Rcd __ (rel. November 18, 2011) ("*2011 USF/ICC Rules Order*") ("719. In the USF/ICC Transformation NPRM, we also sought comment on a proposed rule that would prohibit service providers from altering or stripping relevant call information. More specifically, we proposed to require all telecommunications providers and entities providing interconnected VoIP service to pass the calling party's telephone number (or, if different, the financially responsible party's number), unaltered, to subsequent carriers in the call path. …" (emphasis added)

A: Yes. They apparently believed that the language in the proposed rule concerning "financially responsible party" caused problems.[24] So they came up with a different approach. We are not sure that the change helps to clarify anything, and we believe that even under the new rules it is proper to signal the Transcom BTN, but in the interest of trying to reduce the noise level in all these state proceedings Halo ceased populating Transcom's BTN in the CN address signal on December 29, 2011, which is the effective date of the new rules. We are doing this even though it is not clear – given the debate over whether Halo is the originating carrier or an "intermediate carrier" – which of § 64.1601(a)(1) or § 64.1601(a)(2) applies. I continue to believe we are the originating carrier and § 64.1601(a)(1) applies and we are supposed to populate the CN since it differs from the CPN. Sadly, I suspect that the very entities that complained about Halo populating this information in the CN will now complain when we stop.

Q: Does this conclude your testimony?

A: Yes. I reserve the right to make corrections of any errors we may discover by submitting an *errata*. And, of course, we may file rebuttal to AT&T's direct testimony.

[24] *2011 USF/ICC Rules Order* ¶ 720. ("In response to comments in the record, we make several clarifying changes to the text of the proposed rules in this section. First, commenters objected to the use of the undefined term "financially responsible party" in the proposed rules. We agree with the concerns and clarify that providers are required to pass the billing number (e.g., CN in SS7) if different from the calling party's number. …" (footnotes omitted)

Federal Communications Commission

Wireless Telecommunications Bureau

RADIO STATION AUTHORIZATION

LICENSEE: HALO WIRELESS

ATTN: NATHAN NELSON
HALO WIRELESS
307 WEST 7TH STREET SUITE 1600
FORT WORTH, TX 76102-5114

Call Sign	File Number
WQJW781	0003681223
Radio Service NN - 3650-3700 MHz	
Regulatory Status Common Carrier	

FCC Registration Number (FRN): 0018359711

Grant Date	Effective Date	Expiration Date	Print Date
01-27-2009	01-27-2009	11-30-2018	01-27-2009

Market Name: Nationwide

Channel Block: 003650.00000000 - 003700.00000000 MHz

Waivers/Conditions:

This nationwide, non–exclusive license qualifies the licensee to register individual fixed and base stations for wireless operations in the 3650–3700 MHz band. This license does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station on ULS and mobile and portable stations are authorized to operate only if they can positively receive and decode an enabling signal transmitted by a registered base station. To register individual fixed and base stations the licensee must file FCC Form 601 and Schedule M with the FCC. See Public Notice DA 07–4605 (rel November 15, 2007)

Conditions:
Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.