

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	:	

REBUTTAL TESTIMONY OF LINDA N. ROBINSON

SUBMITTED: January 20, 2012

1 **Q. Please state your name and business address.**

2 A. My name is Linda Robinson. I hold the position of Manager-Carrier Relations for
3 TDS Telecom at 10025 Investment Drive, Knoxville, TN 37932.

4

5 **Q. Did you file direct testimony in this proceeding before the Tennessee Regulatory**
6 **Authority on behalf of the RLEC Complainants?**

7 A. Yes.

8

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

10 A. The purpose of my rebuttal testimony is to address portions of the direct
11 testimony of Russ Wiseman, which was filed on behalf of Halo Wireless, Inc. (“Halo”)
12 on January 9, 2012, and the direct testimony of Robert Johnson, which was filed on
13 behalf of Transcom Enhanced Services, Inc. (“Transcom”) on January 9, 2012.

14

15 **Q. Both Halo witness Wiseman and Transcom witness Johnson state that “only IXCs”**
16 **must buy or are subject to “exchange access service” charges¹, do you agree?**

17 A. No. While we believe that both Halo and Transcom are IXCs, as explained in the
18 RLEC’s Direct Testimony, IXC status is not a precondition to being charged access rates.
19 Even if Halo was a CMRS provider, the FCC’s Local Competition First Report and
20 Order², established what is known in the industry as the “intraMTA rule” which states
21 that “calls between a LEC and a CMRS provider that originate and terminate within the
22 same Major Trading Area (MTA) at the time the call is initiated are subject to reciprocal

¹ Direct Testimony of Russ Wiseman, p15, lines 7-9; Direct Testimony of Robert Johnson, p 4, lines 2-3.

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Report and Order, 11 FCC Rcd15499- 16031 (1996), ¶1036 (“Local Competition Order”).

1 compensation obligations under section 251 (b)(5), rather than interstate or intrastate
2 access charges.” As such, calls between a LEC and a CMRS provider that do not
3 originate and terminate within the same MTA (interMTA) remain subject to access
4 charges, whether or not they are carried by an IXC.³

5 Nor is the application of access charges limited only to IXCs and CMRS
6 providers. The RLECs’ NECA tariffs define access “customer” as:

7 The term "Customer(s)" denotes any individual, partnership, association,
8 joint-stock company, trust, corporation, or governmental entity or other
9 entity which subscribes to the services offered under this tariff, including
10 both Interexchange Carriers (ICs) and End Users.⁴.

11
12 In other words, any entity that uses our access service is an access customer. This same
13 definition applies to the RLECs’ intrastate services. While Halo has never requested such
14 status, it certainly has subscribed to access service by using it.

15
16 **Q. Halo witness Wiseman states that “Numbers are not a reliable proxy for**
17 **location...”⁵ Do you agree with that statement?**

³Local Competition Order, FN 2385 “[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber’s local cellular number will be routed to them over interstate facilities when the customer is “roaming” in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge.... Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carriers; carrier [i.e. access] charges is defined by §69.5(b) of our rules.” *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 RR 2d 1275, 1284-85 n.3 (1986).

⁴ The NECA interstate tariff was recently updated, effective December 29, 2011, to change the definition of “Customer” to state “...*including but not limited to End Users, Interexchange Carriers (ICs) and other telecommunications carriers or providers originating or terminating Toll VoIP-PSTN Traffic.*” (Emphasis added) This change is reflective of the fact that, under the current rules, access charges may apply to entities that do not meet the statutory definition of Interexchange Carrier.

⁵ Direct Testimony of Russ Wiseman, p 16, line 17.

1 A. Not at all. While I do agree that wireline and wireless services are converging and
2 traditional distinctions are blurring,⁶ the need for billing of intercarrier compensation
3 continues. The telephone number remains the best proxy for customer location in the
4 absence of specific evidence regarding the customer's location. Regulatory steps are
5 being taken to transition to unified intercarrier compensation rates which would eliminate
6 the need to make distinctions and further close down arbitrage opportunities.⁷

7 That said, however, until the industry reaches the unified state (i.e., intercarrier
8 compensation is completely phased out), even though telephone numbers are not always
9 100% certain way to identify the location or technology being used by the originating end
10 user, they remain the best (and only) proxy for the majority of calls. This methodology
11 remains the industry standard basis for intercarrier billing. Several anecdotal examples
12 have been presented by Halo⁸ to show instances where the telephone number may not
13 reflect the true originating location. However, no direct evidence has been presented that
14 shows that these examples represent the type of traffic being transported by Halo and
15 Transcom. In fact, both Halo and Transcom indicate that they do not know where the
16 traffic they deliver originates⁹.

17 For example, in the case of a true mobile service where the end user customer is
18 traveling outside the home exchange associated with their assigned telephone number, the
19 FCC has determined that the first tower location that receives the call is the best indicator
20 of the originating location. This information may be signaled in the Jurisdiction Indicator
21 Parameter (JIP) field in the signaling records. However, carriers have not been required

⁶ *Id.* p18, lines 12-13.

⁷ *Connect America Fund*, Report and Order and Further Proposed Rulemaking, FCC 11-161, 2011 WL 5855975 (rel. Nov. 18, 2011).

⁸ Direct Testimony of Russ Wiseman, pp 18-20.

⁹ Direct Testimony of Robert Johnson, p 8, lines 14-15 and Direct Testimony of Russ Wiseman, p 16, lines 13-15.

1 to signal JIP, and many choose not to do so. As a result, when more precise information
2 is lacking, the assigned Telephone Number may be the best available indicator to be used for
3 jurisdictional purposes.

4
5 **Q. Witness Wiseman puts forth an alternate argument that perhaps Halo is providing**
6 **an exchange access service that should be billed under meet point billing principles**
7 **to another carrier other than Halo,¹⁰ what is your opinion regarding that argument?**

8 A. Knowing whether Halo agreed to provide “exchange access services” or “voice
9 termination services” to its customer, Transcom, would be a relevant fact for that
10 determination. Neither Halo nor Transcom has introduced any customer contracts to
11 support this argument. In the typical Least Cost Routing arrangements, the Least Cost
12 Routing carrier takes on both financial and operational responsibility when they contract
13 to deliver traffic to its terminating destination for other carriers for a fee. If this, typical
14 arrangement, is the relationship between Transcom and the originating carrier, or
15 between Transcom and Halo, it would be inappropriate for the RLECs to bill the “carrier
16 that holds the number appearing in the CPN”, as suggested by witness Wiseman.¹¹ In
17 addition, Meet Point Billing arrangements do not just occur when traffic starts flowing
18 between carriers. Meet Point Billing (“MPB”) is a well-developed billing standard based
19 on mutual agreements between service providers regarding which MPB option will be
20 used, billing percentages based upon ownership of the physical plant used to provide the
21 service, and other items to ensure billing accuracy and auditability. As stated in the
22 Multiple Exchange Carrier Access Billing Guidelines (MECAB), “the determination of

¹⁰ Direct Testimony of Russ Wiseman, p 29, lines 1-6.

¹¹ *Id.*, p 29, lines 11-13.

1 implementing a meet-point Billing arrangement between providers, which operate in the
2 same territory, is based upon provider-to-provider negotiations where the regulatory
3 environment permits.”¹² No negotiations regarding implementation of MPB options have
4 occurred between the RLECs and either Halo or Transcom. If, as Mr. Wiseman asserts,
5 Halo were providing “exchange access service” to which meet-point billing should apply,
6 Halo has failed to take the necessary steps to implement such arrangements.
7

8 **Q. Can you give an example of a typical Least Cost Routing billing arrangement?**

9 A. Yes. Vonage relies exclusively upon third party transport providers, including
10 Transcom, to deliver traffic, including both inter and intraLATA toll. Vonage does,
11 however, pay the third party transporter a price that includes the costs of terminating
12 access, as it describes in its most recent 10-K filing at the U.S. Securities and Exchange
13 Commission:

14 The incumbent phone companies own networks that include a “last mile”
15 connection to substantially all of our existing and potential domestic
16 customers as well as the places our customers call domestically. As a
17 result, the vast majority of the calls placed by a Vonage customer are
18 carried over the “last mile” by an incumbent phone company, and we
19 indirectly pay access charges to these competitors for each of these calls.¹³
20

21 Vonage further states that terminating access charges are a substantial part of its
22 operating costs:

23 These costs [“access charges that we pay to other telephone companies”]
24 represented approximately 49% and 44% of our total direct cost of
25 telephony services for 2010 and 2009, respectively, with a portion of these

¹² The Alliance for Telecommunications Industry Solutions *Multiple Exchange Carrier Access Billing Guidelines*, Issue 10, September 2010 at 2.1

¹³ <http://google.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=7735695-791-475801&type=sect&tabindex=2>, Vonage Form 10-K for the fiscal year ended December 31, 2010 (“Vonage 2010 10-K”) at p 7.

1 payments ultimately being made to incumbent telephone companies.
2 When a Vonage subscriber calls another Vonage subscriber, we do not pay
3 an access charge.¹⁴
4

5 In other words, Vonage pays its third party carriers an amount for transport that it
6 believes covers the access charges of the terminating “last mile” carriers such as the
7 RLECs. This is not a new description by Vonage. Its SEC Form 10-K has consistently,
8 year after year, described its operation in this manner.
9

10 **Q. What happens, then, if Transcom doesn’t pay the terminating access charges that**
11 **originating carriers pay to it?**

12 A. Transcom keeps as its own profit, any amounts paid by its customers that are
13 intended to pay the terminating carrier for the last mile. As set forth in the direct
14 testimony of Mr. McCabe, a conservative estimate of the amount of access charges
15 avoided by Transcom is approximately \$3,500,000 per month.
16

17 **Q. An e-mail sent to TDS Telecom by Tommy Harris, Director of Sales for Transcom**
18 **labeled “Transcom/Best pricing U.S. Termination” introduced in Mr. McCabe’s**
19 **Rebuttal Testimony identifies Comcast, Cablevision, Vonage, Cox Communications,**
20 **Sprint as being Transcom customers. Do any of these companies send traffic**
21 **directly to the RLECs?**

22 A. Yes. Comcast and Sprint both operate in Tennessee and deliver traffic directly to
23 the RLECs. For example, Comcast directly delivers local and intraLATA toll traffic to
24 the other LECs in the LATA. For interLATA toll calls, Comcast relies upon third party

¹⁴ Vonage 2010 10-K at 29.

1 transport to deliver. This is where Transcom would come in; on a hand off of a Comcast-
2 originated interLATA toll call.

3
4 **Q. When delivering toll traffic directly to the RLECs do Comcast and Sprint pay**
5 **terminating access charges?**

6 A. Yes. They pay tariffed switched access charges calculated using traditional
7 methodology for determining applicable jurisdiction, namely, the points of call
8 origination and termination.

9
10 **Q. Have any TDS Telecom operating companies entered into interconnection**
11 **negotiations with Halo?**

12 A. As referenced in the schedule presented by witness Wiseman, pp 23-24, three
13 TDS Telecom companies operating in California, Happy Valley Telephone Company,
14 Hornitos Telephone Company and Winterhaven Telephone Company, have entered into
15 negotiations with Halo.

16
17 **Q. Please explain how this arose?**

18 A. In April 2011, the three TDS California companies participated with a group of
19 other rural local exchange carriers in California, through counsel, to request
20 interconnection negotiations with Halo. The request while initiated pursuant to 47 C.F.R.
21 § 20.11(e), specifically referenced the RLECs' concern that some portion of the traffic
22 being delivered by Halo was either non-CMRS originated traffic, or CMRS-originated

1 interMTA traffic which would be subject to access charges. A copy of the request is
2 attached to this testimony as RLEC Exhibit LR-6.

3
4 **Q. Have the TDS California companies issued invoices to Halo?**

5 A. Yes. Following the interconnection request, the TDS California companies
6 began billing interim reciprocal compensation to Halo pursuant to 47 C.F.R. § 20.11(e)
7 until such time as we had information upon which to determine what portion of the traffic
8 was indeed subject to access charges. Beginning with the September, 2011 invoices to
9 Halo from the TDS California companies, the charges included both interim reciprocal
10 compensation for local or intraMTA CMRS traffic and access charges for all other traffic
11 based upon the results of usage data analysis performed by TDS Telecom.

12
13 **Q. Have any TDS Telecom operating companies received payments from Halo?**

14 A. Yes. Both Happy Valley Telephone Company and Hornitos Telephone Company
15 have received payments from Halo.¹⁵ Rather than payment in full of the invoiced amount,
16 the payments received represented a re-rating by Halo of all minutes at an interim
17 reciprocal compensation rate.

18
19 **Q. Does TDS Telecom consider these payments to be full compensation for the services**
20 **provided by these companies to Halo?**

21 A. No. It is my understanding that counsel for those TDS companies has informed
22 Halo's counsel that we are accepting those payments as partial payments of access

¹⁵ Winterhaven Telephone Company does not currently have any usage terminating from Halo.

1 charges only, not payment in full or agreed upon compromise payments for prior period
2 invoices.

3
4 **Q. What is the current status of interconnection negotiations between Halo and TDS**
5 **Telecom companies in California?**

6 A. Halo's bankruptcy filing was made before the statutory timeframe for voluntary
7 interconnection negotiations expired. As a result of the bankruptcy filing the parties
8 agreed to suspend negotiations and any filing for arbitration before the California Public
9 Utilities Commission until the completion of the bankruptcy case.

10
11 **Q. Despite the fact that some TDS companies requested interconnection negotiations**
12 **with Halo, is that the only remedy available to the RLECs for compensation as**
13 **indicated by Mr. Wiseman¹⁶?**

14 A. No. In my opinion, based on the usage analyses described in my direct testimony,
15 the majority of the traffic sent by Halo for termination by the RLECs is traffic subject to
16 access charges. Access services and charges are the subject of and are billed in
17 accordance with interstate and intrastate filed tariffs, not interconnection agreements.

18
19 **Q. Does that conclude your direct testimony?**

20 A. Yes, thank you.

¹⁶ Direct Testimony of Russ Wiseman, pg 25, lines 12-19.

RLEC EXHIBIT LR-6

COOPER, WHITE & COOPER LLP

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April 1, 2011

Via U.S. Mail

John Marks
Halo Wireless
3437 W.7th Street, Suite 127
Fort Worth, TX 76107

Re: Request for Negotiation by:

Calaveras Telephone Company – OCN 2301
Cal-Ore Telephone Co. – OCN 2311
Ducor Telephone Company – OCN 2313
Foresthill Telephone Co. – OCN 2318
Kerman Telephone Co. – OCN 2324
Happy Valley Telephone Company – OCN 2321
Hornitos Telephone Company – OCN 2322
Pinnacles Telephone Co. – OCN 2346
The Ponderosa Telephone Co. – OCN 2332
Sierra Telephone Company, Inc. – OCN 2338
The Siskiyou Telephone Company – OCN 2339
Volcano Telephone Company – OCN 2343
Winterhaven Telephone Company – OCN 2323

Dear Mr. Marks:

On behalf of the above-listed rural local exchange carriers operating in California ("California RLECs"), we write to formally request negotiation of traffic compensation agreements between the legal entities comprising Halo Wireless and the California RLECs. This request for negotiation is made pursuant to 47 C.F.R. § 20.11(e), as adopted by the Federal Communications Commission. *See Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, *Declaratory Ruling and Report and Order*, FCC 05-42 (rel. February 24, 2005). This request is limited solely to the negotiation of a compensation agreement for the exchange of traffic and is made without waiver of, or prejudice to, any or all of the California RLECs' rights and

John Marks
April 1, 2011
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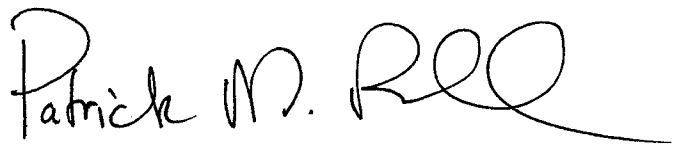
remedies at law or in equity, all of which are expressly reserved. By requesting negotiation of a compensation agreement, the California RLECs are not waiving any of their rights, including, but not limited to, those provided under 47 U.S.C. § 251(f).

We understand from your communications with some of the above-referenced companies that Halo Wireless contends that its traffic is wireless-originated intra-MTA, local traffic subject to reciprocal compensation arrangements. Our initial investigation of the nature of this traffic has led us to conclude that significant amounts of the traffic are either wireline-originated non-local traffic or wireless-originated inter-MTA traffic, both of which are subject to access charges. We would like to work with you to clarify the nature of the traffic from Halo Wireless so that the correct rates can be applied to it.

We expect that any traffic that falls within the scope of our access tariffs will be paid at applicable access rates. With respect to any traffic that is in fact wireless-originated local traffic, please find enclosed a form of a draft compensation agreement that can be used to prepare individual agreements between each of the California RLECs and Halo Wireless. This draft agreement parallels several of the agreements that have been reached between the California RLECs and other wireless providers. As you will see, this draft agreement would have to be modified to include certain company-specific information for each California RLEC and Halo Wireless.

We look forward to working with you to arrive at a mutually-agreeable compensation agreement. Please call me at your earliest convenience at 415-433-1900 to begin discussing the terms of an agreement between the California RLECs and Halo Wireless.

Very truly yours,

A handwritten signature in black ink, reading "Patrick M. Rosvall". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Patrick M. Rosvall

Enclosure