

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	§	
COMPANY, INC., PEOPLES TELEPHONE	§	
COMPANY, WEST TENNESSEE	§	
TELEPHONE COMPANY, INC., NORTH	§	
CENTRAL TELEPHONE COOP., INC.,	§	DOCKET NO. 1100108
HIGHLAND TELEPHONE COOPERATIVE,	§	
INC., AGAINST HALO WIRELESS, LLC,	§	
TRANSCOM ENHANCES 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	§	

NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE that a **Notice of Removal** of the above entitled action from the Tennessee Regulatory Authority, to the United States District Court for the Middle District of Tennessee, Nashville Division was duly filed on the 19th Day of August 2011 by Halo Wireless, Inc. and Transcom Enhanced Services pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure in the United States District Court for the United States District Court for the Middle District of Tennessee, Nashville Division. A true and correct copy of such Notice of Removal is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure, no further action can be taken

in the above captioned proceeding unless otherwise ordered by the district court or a subdivision thereof.

Respectfully submitted this 19th day of August, 2011.



PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

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LLP**

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*Attorneys for Halo, Wireless, Inc. and Transcom
Enhanced Services, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Removal* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and other designated contact individuals on this the 19th day of August, 2011:

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:**

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
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Nashville, TN 37219

Norman J. Kennard
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212 Locust Street
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JAMES M. WEAVER

EXHIBIT
A

NOTICE OF REMOVAL

COME NOW, Halo Wireless, Inc. (the “Debtor”), the debtor and debtor-in-possession in the above referenced bankruptcy case and Transcom Enhanced Services, Inc. (“Transcom”) and file this Notice of Removal as follows:

I. Background

1. On July 7, 2011 the Debtor and Transcom were named as defendants in the lawsuit styled *In Re: Complaint Of Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Tennessee Telephone Company, Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc., North Central Telephone Coop., Inc., Highland Telephone Cooperative, Inc.*, (the “Complainants) *Against Halo Wireless, LLC, Transcom Enhances 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* pending before the Tennessee Regulatory Authority (the “TRA”) under Docket No.: 1100108 (the “TRA Proceeding”).

2. In the TRA Proceeding, the Complainants seek: 1) a declaratory ruling that access charges apply to the wireless traffic sent to the

Complainants by the Debtor 2) a cease and desist order based on the Debtor's provision of a telecommunications service without the certificate of authority that Complainants claim Debtor is required to obtain from the State of Tennessee despite the Debtor's federal authorization to operate; 3) an order directing the Debtor to pay the alleged outstanding intrastate access charges including applicable interest the Complainants claim the Debtor owes; 4) orders finding that Halo and Transcom have violated Tennessee statutes regarding the payment of access charges.

3. The Debtor asserts that the TRA does not have jurisdiction and cannot proceed with the TRA Proceeding because each of the claims for relief asserted by the Complainants implicates federal questions that fall within: (a) the FCC's exclusive original jurisdiction over market entry (licensing) of radio based services, (b) the FCC's exclusive original jurisdiction and power to prescribe rules relating to the process for and rules governing "interconnection" between radio service providers and local exchange carriers, (c) the FCC's exclusive original jurisdiction over market entry to provide interstate communications services by wire and/or radio, and/or (d) the FCC's exclusive original jurisdiction to prescribe "compensation" terms governed by 47 U.S.C. §§ 201 and 251(b)(5), (with regard to interstate communications) and 47 U.S.C. § 251(g). The FCC is

the Congressionally-mandated “first decider” for these issues. *See American Electric Power Co., Inc., et al. v. Connecticut et al*, No. 10-174, _ U.S. _, slip op. at 13 (June 20, 2011).

4. On August 5, 2011, the Debtor and Transcom each filed Motions to Dismiss the TRA Proceeding based on the TRA’s lack of jurisdiction over the claims in dispute. However, the TRA, without issuing an actual ruling on the Motions to Dismiss, simply indicated that it would proceed in the case.

5. On August 8, 2011, the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, commencing the above referenced bankruptcy case which bears Case No. 11-42464 (the “Bankruptcy Case”).

6. On August 10, 2011, the Debtor filed a Suggestion of Bankruptcy with the TRA notifying the TRA and all parties to the TRA Proceeding that the Debtor had filed for bankruptcy and that the provisions of 11 U.S.C. §362 (the automatic stay) were applicable to the Debtor and Transcom because the claims asserted by the Complainants against the Debtor and Transcom were inextricably intertwined and related such that

any ruling on the claims against Transcom would effectively be a ruling against the Debtor.

II. Authority for Removal under 28 U.S.C. §1452

7. The TRA proceeding may be removed to this Court pursuant to 28 U.S.C. §1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. §1452(a) (emphasis added).

Based on the language of section 1452, a party may remove any “civil action” over which a Court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has original jurisdiction over all civil actions “arising under title 11, or arising in or related to cases under Title 11”.

8. The TRA Proceeding is related to the Debtor’s Bankruptcy Case within the meaning of 28 U.S.C. § 1334 because the claims for relief asserted by the Complainants therein seek to determine amounts the Debtor and Transcom allegedly owe the Complainants and more importantly challenges the Debtor’s right to operate its business.

9. The TRA Proceeding is a “civil action” within the meaning of 28 U.S.C. § 1452 because: a) the TRA Proceeding is a private party dispute between the Complainants, the Debtor and Transcom in which the Complainants seek monetary damages and injunctive relief; and b) the TRA Proceeding is not a civil action by the State of Tennessee or other governmental unit to enforce such governmental unit's police or regulatory power. The TRA is merely acting as a judicial tribunal over the private civil action between the Complainants, Debtor, and Transcom.

10. Based on the foregoing, the TRA Proceeding may be removed to this Court pursuant to 28 U.S.C. § 1452.

III. All Requirements for Removal Have Been Met and Removal to this Court is Proper

11. This Notice of Removal is timely pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure (“FRBP”) because the Debtor and Transcom filed this Notice of Removal with this Court within ninety (90) days of entry of the order for relief under the Bankruptcy Code and within ninety (90) days of the Petition Date because the commencement of a voluntary chapter 11 proceeding constitutes an order for relief. 11 U.S.C. §301(b).

12. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).

13. The United States District Court for the Middle District of Tennessee, Nashville Division, is the proper court in which to remove this action pursuant to 28 U.S.C. § 1452 and FRBP 9027 because the TRA Proceeding is pending in this district and division.

14. Written notice of the filing of this Notice of Removal and a copy of this Notice of Removal are being served upon the Complainants through their counsel of record and will be filed with the Clerk of the TRA.

15. True and correct copies of the pleadings and other documents on file in the TRA Proceeding are attached hereto as follows:

<u>Exhibit</u>	<u>Date</u>	<u>Filing</u>
1.	07/07/11	Complaint
2.	08/05/11	W. Scott McCollough's Motion for Admission Pro Hac Vice
3.	08/05/11	Troy P. Majoue's Motion for Admission Pro Hac Vice
4.	08/05/11	Jennifer M. Larson's Motion for Admission Pro Hac Vice
5.	08/05/11	Motion to Dismiss (Halo)
6.	08/05/11	Motion to Dismiss (Transcom)
7.	08/10/11	Suggestion of Bankruptcy
8.	08/12/11	Final Conference Agenda
9.	08/15/11	Addendum to Final Conference Agenda

10. 08/15/11 Steven H. Thomas' Motion for Admission Pro Hac Vice
11. 08/15/11 Jennifer M. Larson's Amended Motion for Admission Pro Hac Vice
12. 08/15/11 Troy P. Majoue's Amended Motion for Admission Pro Hac Vice
13. 08/15/11 Response in Opposition to Motion to Dismiss Filed by Transcom Enhanced Services, Inc. (Cover letter dated August 11, 2011 instead of August 15, 2011)
14. 08/15/11 Letter to the TRA from H. LaDon Baltimore, et al, acknowledging no response forthcoming regarding the Motion to Dismiss file by Halo Wireless, Inc. due to bankruptcy filing
15. 08/16/11 Letter to the TRA from H. LaDon Baltimore, et al., informing TRA of error contained in August 15, 2011 letter (actually dated August 11, 2011) (incorrect reference to Georgia PSC Docket Number)
16. 08/19/11 Notice of Removal to TRA
17. Transcom, who is the co-defendant in the TRA Proceeding, consents to and joins in the removal of the TRA Proceeding to this Court and referral to the Bankruptcy Court.
18. Neither the Debtor nor Transcom has heretofore sought similar relief regarding the removal of the TRA Proceeding.

IV. ADOPTION AND RESERVATION OF DEFENSES

19. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's or Transcom's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) improper venue; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available under applicable state or federal law, or otherwise, which rights are expressly reserved.

20. Further, nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights and protections under the automatic stay provided pursuant to 11 U.S.C. §362 and any other provision of the United States Bankruptcy Code, which rights and protections are expressly reserved.

WHEREFORE the Debtor and Transcom hereby remove the TRA Proceeding to the United States Bankruptcy Court for the Northern District of Tennessee pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted this 19th day of August, 2011.

Respectfully submitted,



PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

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Transcom Enhanced Services, Inc.*

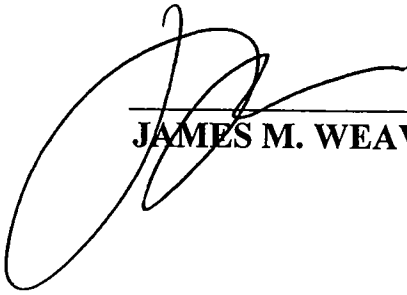
CERTIFICATE OF SERVICE

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**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico
TELEPHONE 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.:**

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Harrisburg, PA 17108-9500



JAMES M. WEAVER

1



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IN RE: :
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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 :

DOCKET NO. _____

COMPLAINT

Complainants, Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company and Tennessee Telephone Company (collectively "TDS Telecom" or "TDS Companies"); Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc. (collectively "TEC Companies"); Highland Telephone Cooperative, Inc. ("HTC"); and North Central Telephone Coop., Inc. ("NCTC") (all collectively referred to as the "Rural Telephone Companies" or the "RLECs") and, pursuant to T.C.A. §§ 65-4-101, 65-4-117(1) and 65-5-110(a) and regulations of the Tennessee Regulatory Authority ("Authority" or "TRA"), file this Complaint against Halo Wireless, LLC ("Halo Wireless"), Transcom Enhanced Services, Inc. ("Transcom"), and such other affiliated companies as are involved in the delivery of traffic to the Rural Telephone

Companies for termination that have failed and refused to pay the applicable intrastate access charges, and, in support thereof, state as follows:

The Parties

The TDS Companies

1. The TDS Telecom companies are incumbent local exchange carriers ("ILECs") operating in the State of Tennessee pursuant to the authority granted to them by the Tennessee Regulatory Authority ("TRA" or "Authority").

a) Concord Telephone Exchange, Inc. ("Concord") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 10025 Investment Drive, Knoxville, Tennessee 37932.

b) Humphreys County Telephone Company ("Humphreys County") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 10025 Investment Drive, Knoxville, Tennessee 37932.

c) Tellico Telephone Company ("Tellico") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 10025 Investment Drive, Knoxville, Tennessee 37932.

d) Tennessee Telephone Company ("Tennessee Telephone") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 10025 Investment Drive, Knoxville, Tennessee 37932.

2. TDS Telecom provides local exchange service within specifically defined areas and expanded local calling within areas established by the TRA.

3. TDS Telecom is not an intrastate toll provider, and the TDS Companies are not authorized to carry end user traffic beyond their TRA-defined certificated service area boundaries.

4. TDS Telecom provides both local exchange services and intrastate exchange access service pursuant to the TRA's existing policies, rules and regulations. TDS Telecom tariffs identify the rates, terms and conditions applicable to its local exchange services and switched access services. These tariffs are on file with the TRA.

The TEC Companies

5. The TEC companies are ILECs operating in the State of Tennessee pursuant to the authority granted to them by the Authority.

a) Crockett Telephone Company, Inc. ("TEC - Friendship") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 563 Main Street, Friendship, Tennessee 38034.

b) Peoples Telephone Company ("TEC - Erin") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 4587 West Main Street, Erin, Tennessee 37061.

c) West Tennessee Telephone Company, Inc. ("TEC - Bradford") is a corporation organized and existing under the laws of Tennessee, maintaining its principal place of business at 224 East Main Street, Bradford, Tennessee 38316.

6. The TEC Companies provide local exchange service within specifically defined areas and expanded local calling within areas established by the TRA.

7. The TEC Companies provide both local exchange services and intrastate exchange access service pursuant to the TRA's existing policies, rules and regulations. The TEC Companies' tariffs identify the rates, terms and conditions applicable to its local exchange services and switched access services. These tariffs are on file with the TRA.

North Central Telephone Coop., Inc.

8. NCTC is also an ILEC operating in the State of Tennessee as a cooperative, incorporated under the laws of Tennessee, maintaining its principle place of business at 872 Highway 52 E. Bypass, PO Box 70, Lafayette, Tennessee 37083.

9. NCTC is not an intrastate toll provider, and NCTC is not authorized to carry end user traffic beyond its exchanges.

10. NCTC provides local exchange service within a specifically defined and expanded local calling areas established by the TRA.

11. NCTC provides both local exchange services and intrastate exchange access service pursuant to tariffs that identify the rates, terms and conditions applicable to its local exchange services and switched access services.

Highland Telephone Cooperative, Inc.

12. Highland Telephone Cooperative, Inc. ("HTC") is an ILEC operating in the State of Tennessee as a cooperative, incorporated under the laws of Tennessee, maintaining its principle place of business at 7840 Morgan County Highway, Sunbright, Tennessee 37872

13. HTC is not an intrastate toll provider, and NCTC is not authorized to carry end user traffic beyond our exchanges.

14. HTC provides local exchange service within a specifically defined and expanded local calling areas established by the TRA.

15. HTC provides intrastate exchange access service pursuant to tariffs that identify the rates, terms and conditions applicable to its local exchange services and switched access services.

Halo Wireless

16. Halo Wireless, Inc. ("Halo Wireless") is a foreign corporation organized and existing under the laws of the State of Texas and is not authorized to do business in State of Tennessee.

17. Halo Wireless delivers third party originated toll traffic to AT&T for further routing onto the rural telephone companies for termination on the RLEC's networks.

18. On information and belief, the officers of Halo Wireless include:

Robert S. Birdwell, CEO and President
Jeff Miller, CFO
Carolyn J. Malone, Secretary and Treasurer

The Halo Wireless company address is:

307 West 7th Street, Suite 1600
Fort Worth, Texas, 76102

19. On information and belief, Halo Wireless operates telephone plant and equipment in the State of Tennessee.

20. On information and belief, Halo Wireless has established physical points of interconnection with AT&T at various rate centers located in the State of Tennessee.¹

21. Halo Wireless is not certificated by the TRA to construct or operate telephone lines, plant or system within Tennessee.

22. Halo Wireless is not certificated by the TRA to provide telecommunications services in Tennessee.

Transcom

23. Transcom Enhanced Services, Inc. ("Transcom") is a foreign corporation organized and existing under the laws of the State of Texas. Transcom is not authorized to do

¹ Including at Chattanooga, Knoxville, Memphis and Nashville.
http://www.localcallingguide.com/lea_listexch.php?ocn=429F

business in State of Tennessee.

24. On information and belief, the officers of Transcom include:

Scott Birdwell, CEO and Chairman
W. Britt Birdwell, COO and President
Jeff Miller, Senior Vice President Strategy and Business
Development
Carolyn J. Malone, Secretary and Treasurer

Transcom's company address is:

307 West 7th Street, Suite 1600
Fort Worth, Texas, 76102

25. On information and belief, Transcom and Halo are "affiliates" as that term has been defined by Tennessee law² and the Federal Communication Commission ("FCC").³

26. Transcom's "core service offering" is "voice termination services."⁴ Voice termination service is the intermediate routing of telephone calls between carriers for termination to the carrier serving the called party. On its website, Transcom "boasts a current run rate of over six billion minutes per year, making Transcom one of the largest terminators of voice traffic in the world."⁵

27. Transcom accepts traditional "circuit switched" protocols such as Time Division Multiplexing ("TDM") traffic switch: "Customers looking for a TDM interconnect can connect to Transcom's Veraz based network at the following switch locations: Atlanta, Dallas, Los Angeles [and] New York[.]"⁶

28. On information and belief, Transcom accepts and re-delivers intrastate Tennessee telecommunications traffic to Halo Wireless for ultimate delivery to the Rural Telephone Companies.

² T.C.A. § 48-11-201(1).

³ 47 C.F.R. § 63.09.

⁴ <http://www.transcomus.com/product.html>. See RLEC Exh. "A" attached.

⁵ <http://www.transcomus.com/background.html>. See RLEC Exh. "A" attached.

⁶ <http://www.transcomus.com/product.html>. See RLEC Exh. "A" attached.

Legal Standards

29. The TDS Companies and TEC Companies are "public utilities" under Tennessee law, as well as "telecommunications service providers."⁷

30. Tariffs as enacted and approved by the TRA are required under Tennessee law.⁸

31. Tariffs must be adhered to by public utilities⁹ and failure to do so is unreasonable discrimination.¹⁰

32. No utility may maintain charges that are unjust, unreasonable, unduly preferential or discriminatory.¹¹

33. No person may avoid the payment of lawful charges for telephone service by fraud.¹²

34. No person may assist another in concealing the place of origination of any telecommunication or for any person to assist another in avoiding payment for such service.¹³

35. Tariffs filed by TDS Telecom and the TEC Companies implement these statutes establishing rates, terms and conditions regarding the use of its network terminating to provide intrastate exchange access service.

36. Halo Wireless employs the tariffed intrastate exchange access services of the Rural Telephone Companies.

37. Halo Wireless has failed and refused to pay the Rural Telephone Companies for terminating Halo Wireless' traffic to their end user customers, according to the rates, terms and conditions set forth in the RLEC's applicable tariffs.

⁷ 65-4-101 (6) and (8).

⁸ 65-5-102.

⁹ 65-5-101(a).

¹⁰ 65-4-122.

¹¹ 65-4-115.

¹² 65-35-102 (2).

¹³ *Id.*

38. Halo Wireless has failed to obtain a Certificate of Convenience and Necessity as required by T.C.A. § 65-4-201(b) to transport and deliver wire line traffic to local exchange companies for termination as described in this complaint.

Dispute Background

39. TDS Telecom receives toll traffic from the AT&T tandems in Knoxville, Nashville and Memphis over common trunk groups.

40. The TEC Companies receive toll traffic from the AT&T tandems in Nashville and Memphis over common trunk groups.

41. NCTC receives toll traffic from the AT&T tandem in Nashville over common trunk groups.

42. HTC receives toll traffic from the AT&T tandem in Knoxville over common trunk groups.

43. Halo Wireless obtained access and connectivity to AT&T and, hence, indirectly to the Rural Telephone Companies, by adoption of an interconnection agreement previously approved between BellSouth and T-Mobile, which adoption was approved by the TRA in Docket No. 10-00063 by Order dated June 21, 2010.

44. Beginning on or about December 2010, the RLECs began receiving voice traffic from Halo Wireless for termination to the RLECs' end user customers. The Rural Telephone Companies receive this traffic for termination over common trunk groups each maintains with the AT&T tandems.

45. The Halo Wireless traffic delivered to the Rural Telephone Companies is predominantly toll traffic to which access charges apply, including both wireline long distance and wireless interMTA traffic.

46. On April 25, 2011 and May 16, 2011, TDS Telecom issued invoices to Halo Wireless for the intrastate switched access services provided to Halo Wireless for which payment was due within thirty (30) days.

47. On May 10, 2011 and June 10, 2011, the TEC Companies issued invoices to Halo Wireless for the intrastate switched access services provided to Halo Wireless for which payment was due within thirty (30) days.

48. NCTC began billing Halo Wireless on March 1, 2011 and April 1, 2011 for reciprocal compensation. Upon discovering the calls were not CMRS intraMTA, NCTC began billing for intrastate terminating traffic, effective with an April 20, 2011 CABS invoice. An additional invoice was issued on June 1, 2011 for access services.

49. HTC first sent an invoice to Halo Wireless on May 1, which was due and payable by June 1, 2011.

50. On June 15, 2011, Halo Wireless sent a dispute letter to Concord stating: "Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either."¹⁴ On June 17, 2011, Halo Wireless sent an identical letter to Tellico.¹⁵ Halo Wireless also disputed the invoices from Tennessee by letter dated June 23, 2011.¹⁶

¹⁴ See RLEC Exh. "B" attached.

¹⁵ See RLEC Exh. "B" attached.

¹⁶ See RLEC Exh. "B" attached.

51. On June 23, 2011, Halo Wireless also sent dispute letters to TEC – Friendship and TEC - Bradford stating: "Please be advised that Halo Wireless, Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to transport and termination of intraMTA traffic. Such charges may not be assessed against CMRS carriers absent a contract, and Halo is under no obligation to pay them. We further observe that Halo has not ordered or received any interstate or intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them either."¹⁷ Halo Wireless has neither paid nor disputed the invoices from TEC - Erin.

52. On April 14, 2011, NCTC received the same form dispute letter from Halo Wireless.¹⁸

53. HTC received the same form letter dated May 24, 2011 from Halo Wireless.¹⁹

54. On June 22, 2011, Concord, Tellico and Tennessee Telephone issued a letter denying Halo Wireless' billing dispute and demanding payment in full.²⁰

55. On June 28, 2011, TEC – Friendship and TEC - Bradford issued letters denying Halo Wireless' billing disputes and demanding payment in full as well as a general collection of past due accounts for TEC - Peoples.²¹

56. On June 28, 2011, NCTC issued a letter denying Halo Wireless' billing dispute and demanding payment in full.²²

57. On June 24, 2011, HTC issued a demand letter also denying Halo Wireless' billing dispute and demanding payment in full.²³

¹⁷ See RLEC Exh. "C" attached.

¹⁸ See RLEC Exh. "D" attached.

¹⁹ See RLEC Exh. "B" attached.

²⁰ See RLEC Exh. "B" attached.

²¹ See RLEC Exh. "C" attached.

²² See RLEC Exh. "D" attached.

²³ See RLEC Exh. "E" attached.

58. On information and belief, Halo Wireless has misrepresented the nature of its traffic by claiming it consists entirely of its own intraMTA wireless originating calls in an effort to avoid liability for the payment of access charges to the Rural Telephone Companies.

59. On information and belief, based upon the Rural Telephone Companies' review of pertinent call data, *none* of the traffic delivered by Halo Wireless is originated by Halo Wireless.

60. On information and belief, the traffic originated by Halo Wireless is predominantly originated by unaffiliated, third party wireline carriers, including incumbent and competitive carriers, as well as cable companies. The remaining portion of the traffic billed consists of (non-Halo) wireless calls originating outside the local MTA.

61. On information and belief, the RLECs believe that Halo Wireless and Transcom are operating, in concert, as interexchange carriers that terminate traffic to local exchange carriers, such as TDS Telecom on behalf of other carriers.

62. On information and belief, the RLECs believe that Halo Wireless is misrepresenting the traffic it delivers and its actions involved in such delivery.

63. On information and belief, the RLECs believe that Transcom is delivering intrastate telecommunications toll traffic to Halo Wireless for termination to the RLECs.

64. On information and belief, the RLECs believe that Halo Wireless, under the arrangement described in this complaint, is not acting as a "CMRS provider," as its dispute letters claim.

65. On information and belief, the RLECs believe that Halo Wireless is also delivering intrastate telecommunications toll traffic to the RLECs for termination.

66. Based on information and belief, Halo Wireless and Transcom are engaged in a highly questionable scheme to avoid the lawful payment of intrastate access charges.

67. Halo Wireless continues to deliver intrastate toll traffic for termination to the Rural Telephone Companies' end user customers to which intrastate access charges apply.

68. Halo Wireless continues to refuse to pay lawful compensation to the Rural Telephone Companies for the intrastate toll traffic it delivers to them.

COUNT I

DECLARATORY RULING THAT ACCESS CHARGES APPLY TO THE TRAFFIC SENT TO TDS TELECOM BY HALO WIRELESS FOR TERMINATION

69. The Rural Telephone Companies incorporate by reference the allegations of paragraphs 1 through 68, as if fully set forth herein.

70. Halo Wireless has acknowledged in FCC filings that its services enable:

Halo's WiMAX-based CMRS service includes broadband data and Internet capabilities, but it also includes real-time, two-way switched voice service support that is interconnected with the public switched network. Halo therefore provides "telephone exchange service" and "exchange access" as defined in § 153 of the Act, which means that Halo is a "service provider" for purposes of numbering and can obtain "CO codes" that are assigned to customers for use in association with Halo's telecommunications service offerings.²⁴

71. The RLECs tariffs identify the rates, terms and conditions applicable to its local exchange services and switched access services.

72. By demanding and using the Rural Telephone Companies' intrastate access services, Halo Wireless has constructively ordered such access services from the RLECs, the terms and conditions of which are set forth in its intrastate access tariffs.

73. The Rural Telephone Companies are entitled to a declaratory ruling from the Authority that intrastate wireline toll traffic and wireless interMTA traffic sent to them by Halo Wireless for termination to the RLECs' end users is subject to intrastate access charges.

COUNT II

**REQUEST A CEASE AND DESIST ORDER BASED ON HALO
WIRELESS'S PROVISION OF A TELECOMMUNICATIONS SERVICE
WITHOUT A CERTIFICATE OF AUTHORITY**

74. The Rural Telephone Companies incorporates by reference the allegations of paragraphs 1 through 73, as if fully set forth herein.

75. T.C.A. § 65-4-201(b) provides that "no individual or entity shall offer or provide...telecommunications services without first obtaining from the Tennessee Regulatory Authority a Certificate of Convenience and Necessity... ."

76. The Tennessee Telecommunications Act of 1995, Public Acts 1995, Chapter 408, as codified in T.C.A. § 65-4-201(b) and elsewhere, requires that providers of telecommunications services, which includes the transport and delivery of wire line traffic to local exchange company for termination, obtain a Certificate of Convenience and Necessity from the Tennessee Regulatory Authority.

77. As of the date of this pleading, Halo Wireless has not been granted either a certificate of authority or a certificate of public convenience and necessity to provide telecommunications services by the TRA.

78. Pursuant to T.C.A. § 65-5-110(a), "the Authority shall have the original jurisdiction to investigate, hear and enter appropriate Orders to resolve all contested issues of fact or law arising as a result of the application of Acts 1995, Ch. 408."

79. The Rural Telephone Companies requests that the TRA issue a Cease and Desist Order to prohibit Halo Wireless from providing telecommunications services in the State of Tennessee until such time as the TRA may hold a hearing on this matter.

COUNT III

**REQUEST FOR AN ORDER DIRECTING HALO WIRELESS TO PAY
ALL OUTSTANDING INTRASTATE ACCESS CHARGES INCLUDING
APPLICABLE INTEREST**

80. The Rural Telephone Companies incorporate by reference the allegations of paragraphs 1 through 79, as if fully set forth herein.

81. Intrastate toll traffic delivered to the RLECs from Halo Wireless for termination to a RLECs end user customer is subject to the switched access charges set forth in the Rural Telephone Companies' Tennessee access services tariffs.

82. Despite its refusal to pay the Rural Telephone Companies' properly billed access charges, Halo Wireless continues to deliver traffic to them for termination to their end user customers.

83. Through May 31, 2011, the total amount owed to TDS Telecom by Halo Wireless was \$81,376.41, which sum increases at a rate of approximately \$24,700 per month. Of the \$81,376 total, \$68,806 thereof is for intrastate traffic termination services, which sum increases at a rate of approximately \$21,000 per month.

84. Through May 31, 2011, the total amount owed to TEC by Halo Wireless was \$34,784, which sum increases at a rate of approximately \$9,900 per month. Of the \$34,784 total, all 856,803 minutes of use thereof are billed as intrastate traffic termination services.

85. As of June 28, 2011, the Halo Wireless balance owed and outstanding to NTC is \$60,757.42, which sum increases at a rate of approximately \$30,000 per month.

86. As of June 28, 2011, the Halo Wireless balance owed and outstanding to HTC is \$156,130.91.

COUNT IV

REQUEST FOR AN ORDER FINDING THAT HALO WIRELESS HAS VIOLATED T.C.A. § 65-35-102 (2)

87. The Rural Telephone Companies incorporate by reference the allegations of paragraphs 1 through 86, as if fully set forth herein.

88. On information and belief, the Rural Telephone Companies believe that Halo Wireless has misrepresented the traffic delivered to them for the purpose and effect of engaging in tariff arbitrage and the avoidance of lawful and effective tariff rates contained in the RLECs' intrastate access tariffs.

89. Halo Wireless is in violation of T.C.A. § 65-35-102 (2) by obtaining or attempting '...to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefore... ."

COUNT V

REQUEST FOR AN ORDER FINDING THAT TRANSCOM HAS VIOLATED T.C.A. § 65-35-102 (2)

90. The Rural Telephone Companies incorporate by reference the allegations of paragraphs 1 through 89, as if fully set forth herein.

91. On information and belief, the Rural Telephone Companies believe that Transcom has caused or assisted Halo Wireless in misrepresenting the traffic delivered to them for the purpose and effect of engaging in tariff arbitrage and the avoidance of lawful and effective tariffed rates contained in the Rural Telephone Companies' intrastate access tariffs.

92. Transcom is in violation of T.C.A. § 65-35-102(2) by causing another to avoid lawful payment for service and/or concealing or assisting another to conceal from any supplier

of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication for the purpose of avoiding payment.

Request for Relief

Based upon these allegations, the Rural Telephone Companies request the TRA:

1. Open an investigation concerning the actions cited in the Complaint;
2. Commence a contested case concerning these actions;
3. Issue a Cease and Desist Order prohibiting Halo Wireless from providing telecommunications services in the State of Tennessee until such time as the TRA may hold a hearing on this matter;
4. Declare that the toll traffic sent to the RLECs by Halo Wireless that originates and terminates in the State of Tennessee is subject to intrastate access charges;
5. Order Halo Wireless and/or Transcom to pay all outstanding intrastate access charges including applicable interest and late payment charges within thirty (30) days of the entry of the TRA's Order;
6. That, if Halo Wireless and/or Transcom fails to make payment in full in accordance with the TRA's Order, the TRA authorize the RLECs to cease termination of traffic from Halo Wireless and Transcom to end user customers of the RLECs and further order, direct and require AT&T to block all traffic from Halo Wireless and/or Transcom for termination to the RLECs' end user customers as a result of Halo Wireless/Transcom's failure to pay all outstanding intrastate access charges due and payable. Any costs incurred by AT&T to block this traffic shall be borne by Halo Wireless and/or Transcom; and

7. The TRA immediately issue an order requiring Halo Wireless and Transcom to issue a security bond in the amount of \$1,000,000 pending the outcome of the TRA decision in this proceeding.

This 7th day of July, 2011.

Respectfully submitted,



H. LaDon Baltimore, BPR #003836

FARRAR & BATES
211 7TH Ave., N. Ste 500
Nashville, TN 37219
(615) 254-3060
Fax: (615) 254-9835
Don.baltimore@farrar-bates.com

Norman J. Kennard
Pennsylvania I.D. No. 29921
212 Locust Street, Suite 500
Harrisburg, PA 17101
(717) 255-7627 telephone
(717) 236-8278 facsimile
nkennard@thomaslonglaw.com

Attorneys for Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone 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.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the within and foregoing COMPLAINT upon the following persons via first class U.S. Mail:

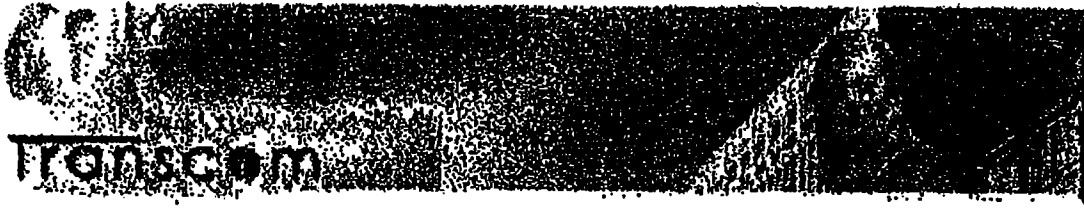
Transcom Enhanced Services, Inc.
C/o Mr. Scott Birdwell
Chairman and CEO
307 West 7th Street, Suite 1600
Forth Worth, Texas 76102

John Marks, Esq., General Counsel
Halo Wireless, Inc.
2351 W. Northwest Hwy, Suite 1204
Dallas, Texas 75220

This 7th day of July, 2011.


H. LaDon Baltimore

EXHIBIT A



Products & Services



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

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

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

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

Voice Termination Service

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

Atlanta

Dallas

Los Angeles

New York

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

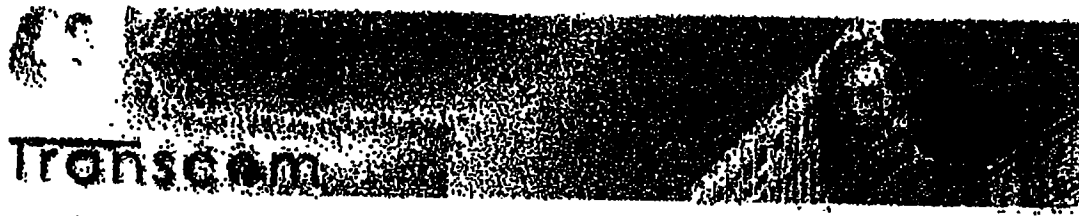
Voice Origination Services

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

Toll Free Termination Services

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

2009 © Copyright Transcom Enhanced Services



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[Products & Services](#)

[Careers](#)

[Investors](#)

[Contact Us](#)

[Home](#)

About Us (Background)

Background

Background

Founded in 1990, Transcom Enhanced Services operates facilities in Dallas, New York, Atlanta and Los Angeles, with its corporate headquarters in Fort Worth. While emphasizing domestic call termination within the United States, Transcom handles a current run rate of over six million minutes per year, making Transcom one of the largest terminators of voice traffic in the world.

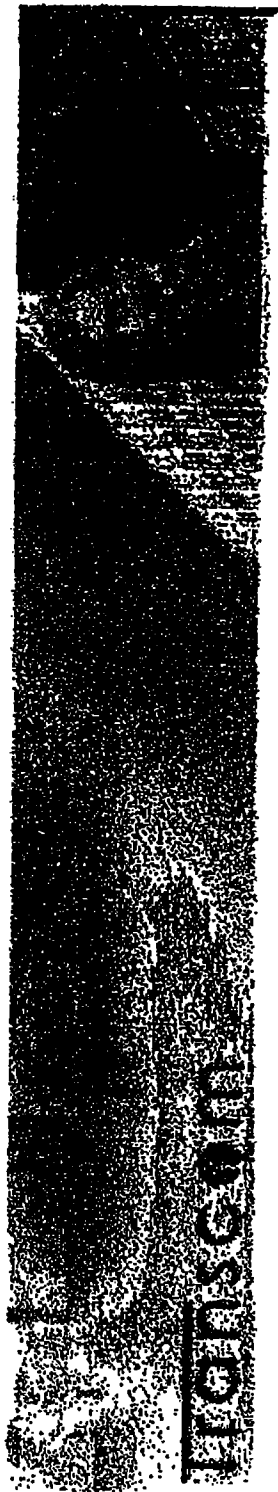
Customers

Typical customers include consumer and enterprise VoIP (Voice over Internet Protocol) providers, cable/MSOs, LECs (Incumbent Local Exchange Carriers), IXCs (Inter-Exchange Carriers), foreign PTTs, calling card operators, wireless carriers, ISPs (Internet Service Providers) and content providers. Customers connect to Transcom at one of our switch locations in Atlanta, Dallas, Los Angeles or New York, or via an IP connection (SIP or H.323). Transcom prides itself in its flexibility to meet the needs of its customers and will do whatever it takes to insure customer satisfaction.

Network Architecture

Transcom's network is based primarily on the Vocus soft switch platform, utilizing NetTone as the Session Border Controller (SBC). Other partners include Pounding for IP routing and switching. Transcom employs its own network operations center which works 24/7/365 to insure maximum network availability all year long.

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About us

Products & Services

Careers

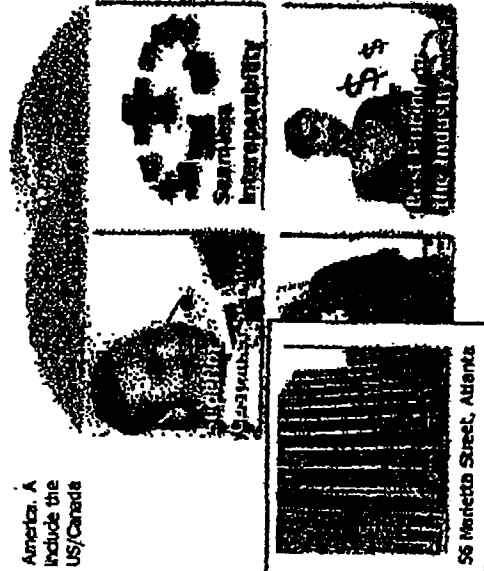
Investors

Contact us

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



Click icon to view offices



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

2009 © Copyright Transcom Enhanced Services

EXHIBIT B

halo
wireless

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

June 15, 2011

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

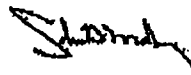
RE: Invoice Number 0047429F-D-11115; 0047429F-D 11145

Dear Sir/Madam:

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

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

Sincerely,



John Marks
General Counsel
jmarks@halowireless.com

Halo
Wireless

2951 W. Northwest Hwy, Suite 1204, Dallas, TX 75220

June 17, 2011

Tellico Telephone Company
Access Service Center
NIX-8701
PO Box 1850
Minneapolis, MN 55480-0850

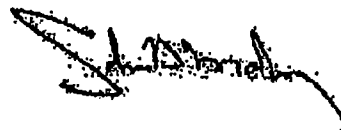
Re: Invoice No. 0240429F-Q-11136

Dear Sir/Madam:

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

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

Sincerely,



John Marks
General Counsel
Halo Wireless, Inc.

Halo
Wireless

23819W. Highway 111, Suite 1224, Dallas, TX 75230.

June 23, 2011

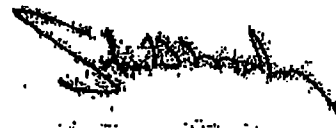
Tennessee Telephonic Company
Access Service Center
NW 8502
PO Box 3438
Memphis, TN 38101

Dear Sir or Madam:

This will acknowledge receipt of your assigned invoice number 000025E-D-4430 with a billing date of May 16, 2011.

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

Sincerely,



John Marks
General Counsel
jmarks@halowireless.com



625 Junction Rd,
Madison, WI 53717
www.tdstelecom.com

June 22, 2011

Delivered signature required

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

Re: Past Due Accounts

Mr. Marks:

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

TDS Company	BAN	Invoice Number	Amount Due
Concord Telephone- TN	0559429FD3	0047429F-D-11115	\$ 6,428.58
Tellico Telephone- TN	0578429FD3	0240439F-D-11136	\$ 10,876.49
Tennessee Telephone -TN	0575429FD3	0061429F-D-11136	\$ 44,931.72
Total			\$ 62,236.79

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

Sincerely,

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



626 Junction Road
Madison, WI 53717

John Marks, General Counsel
Halo Wireless, Inc.
2351 West Northwest Highway
Suite 1204
Dallas, TX 76220

EXHIBIT C



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

June 23, 2011

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

RE: Invoice No. 00014809

Dear Sir or Madame:

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

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

Sincerely,

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

John Marks
General Counsel
jmarks@halowireless.com



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

June 23, 2011

West Tennessee Telephone Company
Attention: TEC ~ RAD CBS Payment Processing
PO Box 24207
Jackson, MS 39225

RE: Invoice No. 00014749

Dear Sir or Madame:

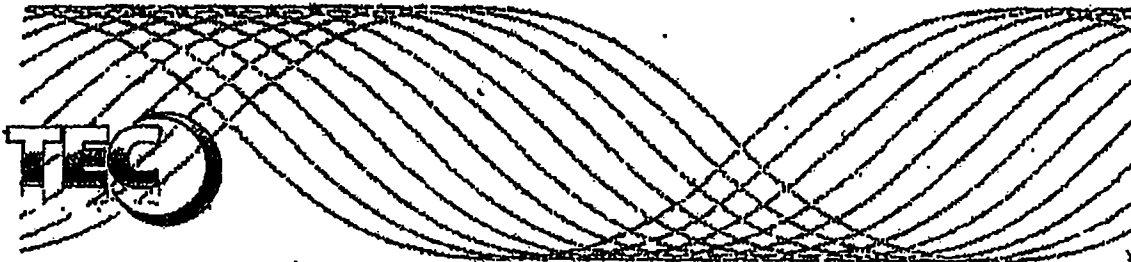
This will acknowledge receipt of your assigned Invoice number 00014749 with a billing date of May 10, 2011.

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

Sincerely,

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

John Marks
General Counsel
jmarks@halowireless.com



June 28, 2011

*Via Certified Mail
Return Receipt Requested*

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

Re: Past Due Accounts

Mr. Marks:

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

Company	BAN	Invoice Number	Amount Due
Crockett Telephone Company, Inc.	0581TVW0429F	14809	\$7,877.47
Total			\$7,877.47

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

Crockett Telephone Company, Inc. is in receipt of your letter dated June 23, 2011, wherein Halo Wireless asserts that it is a CMRS provider and disputes Crockett Telephone Company, Inc.'s bills on the grounds that the charges "appear to relate to transport and termination of IntraMTA traffic." We are aware of numerous industry allegations, based upon traffic analysis, that none of the traffic delivered is originated by Halo Wireless and, moreover, that the vast majority of the traffic originates on wireline LEC or cable company networks and is not CMRS, let alone IntraMTA CMRS. Your letter contains no facts that would support your claims to the contrary.

We, therefore, reject Halo Wireless's claim that the traffic delivered is not properly classified as exchange access to which tariffed access rates apply. Halo Wireless has used Crockett Telephone Company, Inc.'s terminating access services whether it formally ordered them or not. A separate contract is not required for the tariff to apply.

563 Main St, P.O. Box 7, Friendship, TN 38554 | 731.677.3181

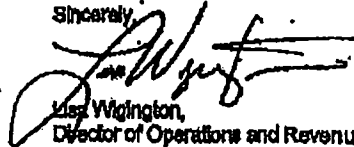
tec.com

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

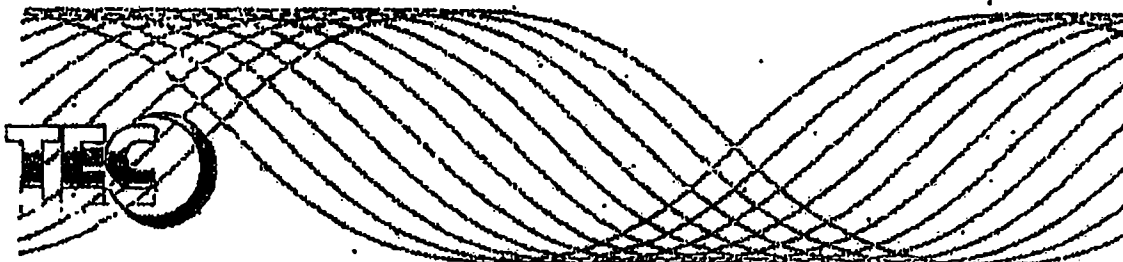
1. A demonstration supporting Halo Wireless's contention that the traffic is intrastate wireless; and
2. A description of Halo Wireless's participation in the wholesale IXC market, including upstream carriers from whom Halo Wireless receives traffic.

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

Sincerely,



Lisa Wington,
Director of Operations and Revenue Assurance



June 28, 2011

*Via Certified Mail
Return Receipt Requested*

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

Re: Past Due Accounts

Mr. Marks:

As of June 28, 2011, the following invoices billed to Halo Wireless by West Tennessee Telephone Company, Inc. are past due.

Company	RAN	Invoice Number	Amount Due
West Tennessee Telephone Company, Inc.	0583TWD429F	14749	\$9,189.75
Total			\$9,189.75

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

West Tennessee Telephone Company, Inc. is in receipt of your letter dated June 23, 2011, wherein Halo Wireless asserts that it is a CMRS provider and disputes West Tennessee Telephone Company, Inc.'s bills on the grounds that the charges "appear to relate to transport and termination of IntraMTA traffic." We are aware of numerous industry allegations, based upon traffic analysis, that none of the traffic delivered is originated by Halo Wireless and, moreover, that the vast majority of the traffic originates on wireline LEC or cable company networks and is not CMRS, let alone IntraMTA CMRS. Your letter contains no facts that would support your claims to the contrary.

We, therefore, reject Halo Wireless's claim that the traffic delivered is not properly classified as exchange access to which tariffed access rates apply. Halo Wireless has used West Tennessee Telephone Company, Inc.'s terminating access services whether it formally ordered them or not. A separate contract is not required for the tariff to apply.

224 E Main St, P.O. Box 10, Bradford, TN 38316 | 731.742.2211

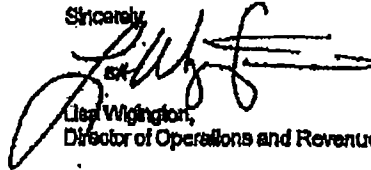
tec.com

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

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

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

Sincerely,



Lisa Wigginton,
Director of Operations and Revenue Assurance



P O BOX 24207, JACKSON, MS 39225

June 28, 2011

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

Re: 0576TW0428F

Dear Sir or Madam:

In a recent review of our accounts for Peoples Telephone Company, we discovered that your account is past due. Please remit payment within thirty (30) days. If payment has been previously paid or if you have any questions, please call me at 601.354.8070.

I appreciate your prompt attention to this matter.

Current -	\$4,489.15
1-30 Days -	\$8,013.69
31-60 days -	\$0.00
61-90 days -	\$0.00
over 90 days -	\$0.00

Sincerely,

Lisa Wigington
Director of Operations and Revenue Assurance

CC: Juanita Martin, Danya Stuart



P O BOX 24207, JACKSON, MS 39225

June 28, 2011

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

Re: 0561TW0429F

Dear Sir or Madam:

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

I appreciate your prompt attention to this matter.

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

Sincerely,

Lisa Wigington
Director of Operations and Revenue Assurance

CC: Juanita Martin, Danya Stuart



P O BOX 24207, JACKSON, MS 39225

June 28, 2011

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

Re: 0583TW0429F

Dear Sir or Madam:

In a recent review of our accounts for West Tennessee Telephone Company, Inc., we discovered that your account is past due. Please remit payment within thirty (30) days. If payment has been previously paid or if you have any questions, please call me at 601.364.9070.

I appreciate your prompt attention to this matter.

Current -	\$2,982.91
1-30 Days -	\$9,189.76
31-60 days -	\$0.00
61-90 days -	\$0.00
over 90 days -	\$0.00

Sincerely,

Lisa Wigginton
Director of Operations and Revenue Assurance

CC: Juanita Martin, Danya Stuart

EXHIBIT D

Halo
wireless

3437 Walnut Street, Suite 207, Fort Worth, TX 76107

April 14, 2011

North Carolina Telephone Cooperative
P.O. Box 20
Lenoir, NC 27555-0020

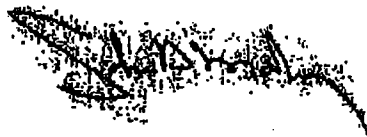
RE: Invoice # 011000000000

Dear Sir/Madam:

This will acknowledge receipt of your invoice of March 11, 2011 and April 1, 2011 under your assigned customer number 23130.

Please be advised that Halo Wireless Inc. is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statements appear to relate to transportation of intrastate traffic. Such charges may not be assessed against CMRS carriers under any contract, and Halo is under no obligation to pay them. We further advise that Halo is not entitled to receive any interstate or intrastate access services from your company that would result in charges to Halo, so we have no obligation to pay them either.

Sincerely,



John Marks
General Counsel
jmarks@halowireless.com

**NORTH CENTRAL
TELEPHONE
COOPERATIVE, INC.**

June 28, 2011

*Via Certified Mail
Return Receipt Requested*

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

Re: Past Due Accounts

Mr. Marks:

As of June 21, 2011, the following invoices billed to Halo Wireless by North Central Telephone Cooperative, Inc. are past due:

Company	EA#	Invoice Number	Amount Due
Halo Wireless	004401	004401-20110421	\$39,040.69
Halo Wireless	004301	004301-20110301	\$21,086.77
Total			\$60,127.46

In accordance with the provisions of the agreement between North Central Telephone Coop., Inc. and Halo Wireless, Inc. dated April 14, 2011, wherein Halo Wireless agreed to pay to North Central Telephone Coop., Inc. bills for the provision of service, including the transmission and termination of interstate calls, we are hereby notified of Halo Wireless' failure to pay the amount of the past due invoices. We are hereby notified of Halo Wireless' failure to pay the amount of the past due invoices. We are hereby notified of Halo Wireless' failure to pay the amount of the past due invoices.

North Central Telephone Coop., Inc. is in receipt of your letter dated April 14, 2011 wherein Halo Wireless asserts that it is a CLEC provider and that the North Central Telephone Coop., Inc. bills for the provision of service, including the transmission and termination of interstate calls, are not subject to the payment penalties, the requirement of deposits, and the termination and other provisions of the agreement. We are hereby notified of Halo Wireless' failure to pay the amount of the past due invoices. We are hereby notified of Halo Wireless' failure to pay the amount of the past due invoices. We are hereby notified of Halo Wireless' failure to pay the amount of the past due invoices.

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

Central Telephone Corp., Inc. terminating these services whether it formally ordered them or not. A separate contract is not required for the traffic to stop.

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

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

In conclusion, Halo Wireless' dispute is rejected. In order to avoid further action by North Central Telephone Company, Inc., we request Halo Wireless must immediately remit payment in full by the amount due on each invoice.

Sincerely,



Thomas J. McGowan
VP Finance and Administrative Services

EXHIBIT E

~~Star~~ Halo
wireless

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

May 24, 2011

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

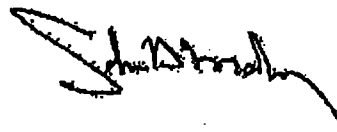
RE: Invoice Nos. 4002KY4296FGD-110501 and 0565TN4296FGD-110501

Dear Mr. Crawford:

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

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

Sincerely,



John Marks
General Counsel
Halo Wireless, Inc.



Technology For All

7840 Morgan County Hwy.
Box 119
Spartanburg, TN 37882

TRADE
HIGHLAND@HIGHLAND.NET

voice 423/628-2121
423/628-2099
423/628-5311

fax 423/628-2469

June 24, 2011

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

Certified Mail
Return Receipt Requested

RE: Past Due Account

Mr. Martin:

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

Invoice	RAN	Amount
0565TN4296FQD-110301	0565TN4296FQD	\$127,342.49

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

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

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

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

Sincerely

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

R.L. Terry

President

James H. Terry

John H. Terry

Chris Terry

Mickey Singham

Jan Boyd

Lorna Dargatzis

David Poynting

Shelby Jo Jones

Shirley Frank

John Hale

Jerry Williams

2

BEFORE THE TENNESSEE REGULATORY AUTHORITY 22
NASHVILLE, TENNESSEE

IN RE:

COMPLAINT OF

CONCORD TELEPHONE EXCHANGE, INC., :

HUMPHREYS COUNTY TELEPHONE :

COMPANY, TELlico TELEPHONE :

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, 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 :

TRANSCOM ENHANCED SERVICES, INC.

DOCKET NO.: 1100108

W. SCOTT MCCOLLOUGH'S MOTION FOR ADMISSION PRO HAC VICE

COMES NOW, W. Scott McCollough ("McCollough") and seeks admission *pro hac vice* to the Tennessee Regulatory Authority, pursuant to Tennessee Supreme Court Rule 19 and Tennessee Regulatory Authority Rule 1220-1-2-.04, to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. In accordance with Rule 19, the Affidavit of W. Scott McCollough is attached as Exhibit A and McCollough's Certificate of Good Standing from the Supreme Court of Texas is attached as Exhibit B.

Respectfully submitted,

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion pending

MATTHEW A. HENRY

Texas State Bar No. 24059121

pro hac vice motion pending

MCCOLLOUGH/HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

STEVEN H. THOMAS

Texas State Bar No. 19868890

pro hac vice motion pending

TROY P. MAJOUÉ

Texas State Bar No. 24067738

pro hac vice motion pending

JENNIFER M. LARSON

Texas State Bar No. 24071167

pro hac vice motion pending

McGUIRE, CRADDOCK

& STROTHER, P.C.

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

**WALLER LANSDEN DORTCH & DAVIS,
LLP**

511 Union Street, Suite 2700

Nashville, TN 37219

Direct: 615-850-8942

Fax: 615-244-6804

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Dismiss* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 5th day of August, 2011:

Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive
Suite 220
Brentwood, Tennessee 37027

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:**

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street
Suite 500
Harrisburg, PA 17108-9500



W. SCOTT MCCOLLOUGH

**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
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

DOCKET NO.: 1100108

AFFIDAVIT OF W. SCOTT MCCOLLOUGH

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared W. SCOTT MCCOLLOUGH, who, being by me first duly sworn, deposed upon his oath as follows:

1. "My name is W. Scott McCollough. I am an attorney licensed to practice law in Texas. I am over twenty-one (21) years of age, of sound mind and capable of making this Affidavit. All matters stated herein are based upon my personal knowledge unless otherwise so stated.

AFFIDAVIT OF W. SCOTT MCCOLLOUGH
969352

Page 1



2. My office address is 1250 S. Capital of Texas Hwy., Bldg. 2-235, West Lake Hills, TX 78746. I was licensed to practice law in the State of Texas on May 13, 1983, under bar number 13434100. I am admitted to practice in the United States District Court for the Western District of Texas, the United States Court of Appeals for the Fifth Circuit and the United States Court of Appeals for the District of Columbia Circuit. I am a member in good standing in all jurisdictions in which I am licensed to practice law.

3. Through my Motion for Admission Pro Hac Vice (the "Motion"), I seek to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. in the above-referenced action before the Tennessee Regulatory Authority.

4. I have not sought admission in any trial or appellate court of Tennessee within the preceding three years. Further, I have not been denied *pro hac vice* admission or had an admission *pro hac vice* revoked by any court in any jurisdiction.

5. I have not been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee or by any similar lawyer disciplinary agency in any jurisdiction. Further, no disciplinary action or investigation concerning my conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee or before any similar lawyer disciplinary agency in any jurisdiction.

6. I am familiar with the Tennessee Rules of Professional Conduct and the rules governing proceedings before the Tennessee Regulatory Authority.

7. I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any manner arising out of my conduct in any proceeding and I agree to be bound by the Tennessee Rules of

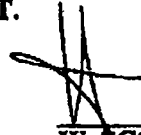
Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

8. Paul S. Davidson and James M. Weaver, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615-850-8942, and Tennessee Bar Number 011789 (Davidson) Tennessee Bar Number 013451 (Weaver) are associated in accordance with Tennessee Supreme Court Rule 19(g).

9. Per discussion with the Tennessee Regulatory Authority, no fees are required to be paid in connection with the Motion.

10. As stated in the Motion, I will serve the Motion and all exhibits upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee."

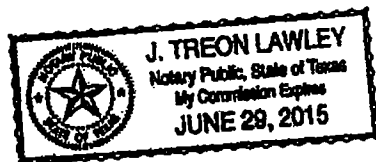
FURTHER AFFIANT SAYETH NOT.

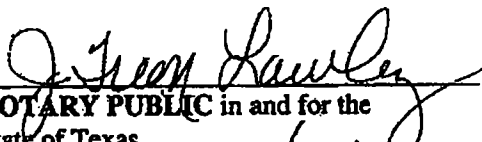


W. SCOTT MCCOLLOUGH

SUBSCRIBED and SWORN TO before me, on this, the 4 day of August, 2011.

[SEAL]




NOTARY PUBLIC in and for the
State of Texas
Commission Expires: 6/29/2015

The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I, **BLAKE HAWTHORNE**, Clerk of the Supreme Court of Texas, certify that the records of this office show that

William Scott McCollough

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 13th day of May, 1983.

I further certify that the records of this office show that, as of this date

William Scott McCollough

is presently enrolled with the State Bar of Texas as an active member in good standing.

IN TESTIMONY WHEREOF witness my hand
and the seal of the Supreme Court of
Texas at the City of Austin, this, the
28th day of July, 2011.

BLAKE HAWTHORNE, Clerk

by Blanca E. Valdez

Blanca E. Valdez, Deputy Clerk

No. 072811G



This certification expires thirty days from this date, unless sooner revoked or rendered invalid by operation of rule or law.

3

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

TRAFFIC

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 :

TROY P. MAJOUÉ'S MOTION FOR ADMISSION PRO HAC VICE

COMES NOW, Troy P. Majoue ("Majoue") and seeks admission *pro hac vice* to the Tennessee Regulatory Authority, pursuant to Tennessee Supreme Court Rule 19 and Tennessee Regulatory Authority Rule 1220-1-2-.04, to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. In accordance with Rule 19, the Affidavit of Troy P. Majoue is attached as Exhibit A and Majoue's Certificate of Good Standing is attached as Exhibit B. Majoue's Certificate of Good Standing from the Supreme Court of Texas, the court of last resort in Texas, has been requested and will be supplemented upon receipt.

Respectfully submitted,



STEVEN H. THOMAS

Texas State Bar No. 19868890

pro hac vice motion pending

TROY P. MAJOUÉ

Texas State Bar No. 24067738

pro hac vice motion pending

JENNIFER M. LARSON

Texas State Bar No. 24071167

pro hac vice motion pending

McGUIRE, CRADDOCK

& STROTHER, P.C.

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion pending

MATTHEW A. HENRY

Texas State Bar No. 24059121

pro hac vice motion pending

MCCOLLOUGH|HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

**WALLER LANSDEN DORTCH & DAVIS,
LLP**

511 Union Street, Suite 2700

Nashville, TN 37219

Direct: 615-850-8942

Fax: 615-244-6804

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Dismiss* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 5th day of August, 2011:

Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive
Suite 220
Brentwood, Tennessee 37027

ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street
Suite 500
Harrisburg, PA 17108-9500



TROY P. MAJOUÉ

**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 :

AFFIDAVIT OF TROY P. MAJOUÉ

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared TROY P. MAJOUÉ,
who, being by me first duly sworn, deposed upon his oath as follows:

1. "My name is Troy P. Majoue. I am an attorney licensed to practice law in Texas.
I am over twenty-one (21) years of age, of sound mind and capable of making this Affidavit. I
have never been convicted of a felony or crime involving moral turpitude. All matters stated
herein are based upon my personal knowledge unless otherwise so stated.

AFFIDAVIT OF TROY P. MAJOUÉ
969593



Page 1

2. My office address is McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, Texas 75201. I was licensed to practice law in the State of Texas in May of 2009, under bar number 24067738, in the State of Louisiana in October of 2005, under the bar number 29963, and in the State of Alabama in May of 2006, under bar number AB-1365-Y88M. I am admitted to practice in the United States District Court for the Northern District of Texas (2009), the United States District Court for the Eastern District of Texas (2009), the United States District Court for the Western District of Texas (1992), the United States District Court for the Southern District of Texas (2009), the United States District Court for the Eastern District of Louisiana (2006), the United States District Court for the Western District of Louisiana (2006), the Middle District of Louisiana (2006), and the United States Court of Appeals for the Fifth Circuit (2006). I am a member in good standing in all jurisdictions in which I am licensed to practice law.

3. Through my Motion for Admission Pro Hac Vice (the "Motion"), I seek to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. in the above-referenced action before the Tennessee Regulatory Authority.

4. I have not sought admission in any trial or appellate court of Tennessee within the preceding three years. Further, I have not been denied *pro hac vice* admission or had an admission *pro hac vice* revoked by any court in any jurisdiction.

5. I have not been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee or by any similar lawyer disciplinary agency in any jurisdiction. Further, no disciplinary action or investigation concerning my conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee or before any similar lawyer disciplinary agency in any jurisdiction.


6. I am familiar with the Tennessee Rules of Professional Conduct and the rules governing proceedings before the Tennessee Regulatory Authority.

7. I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any manner arising out of my conduct in any proceeding and I agree to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

8. Paul S. Davidson and James M. Weaver, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615-850-8942, and Tennessee Bar Number 011789 (Davidson) and Tennessee Bar Number 013451 (Weaver) are associated in accordance with Tennessee Supreme Court Rule 19(g).9. Per discussion with the Tennessee Regulatory Authority, no fees are required to be paid in connection with the Motion.

10. As stated in the Motion, I will serve the Motion and all exhibits upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee."

FURTHER AFFIANT SAYETH NOT.


TROY P. MAJOUÉ

SUBSCRIBED and SWORN TO before me, on this, the 4th day of August, 2011.

[SEAL]




NOTARY PUBLIC in and for the
State of Texas

Commission Expires: 2-25-2013

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

CERTIFICATE OF GOOD STANDING

I, Karen Mitchell, Clerk of the U.S. District Court for the Northern District of Texas, certify that the attorney named below is admitted to practice before this court and is currently in good standing:

Troy P. Majoue

Bar Number:

24067738

Date of Admission:

January 23, 2009

Witness my official signature and the seal of this court.

Dated: July 29, 2011

**Karen Mitchell,
Clerk of Court**

**By: Penny Hunton
Deputy Clerk**

Fee: \$15.00



4

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

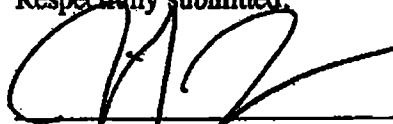
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2010-5-11 11:21

IN RE: :
COMPLAINT OF : T.R.A. DOCKET ROOM
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 :

JENNIFER M. LARSON'S MOTION FOR ADMISSION PRO HAC VICE

COMES NOW, Jennifer M. Larson ("Larson") and seeks admission *pro hac vice* to the Tennessee Regulatory Authority, pursuant to Tennessee Supreme Court Rule 19 and Tennessee Regulatory Authority Rule 1220-1-2-.04, to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. In accordance with Rule 19, the Affidavit of Jennifer M. Larson is attached as Exhibit A and Larson's Certificate of Good Standing from the Northern District of Texas is attached as Exhibit B. Larson's Certificate of Good Standing from the Supreme Court of Texas, the court of last resort in Texas, has been requested and will be supplemented upon receipt.

Respectfully submitted,



STEVEN H. THOMAS

Texas State Bar No. 19868890

pro hac vice motion pending

TROY P. MAJOUÉ

Texas State Bar No. 24067738

pro hac vice motion pending

JENNIFER M. LARSON

Texas State Bar No. 24071167

pro hac vice motion pending

**McGUIRE, CRADDOCK
& STROTHER, P.C.**

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion pending

MATTHEW A. HENRY

Texas State Bar No. 24059121

pro hac vice motion pending

MCCOLLOUGH|HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

**WALLER LANSDEN DORTCH & DAVIS,
LLP**

511 Union Street, Suite 2700

Nashville, TN 37219

Direct: 615-850-8942

Fax: 615-244-6804

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

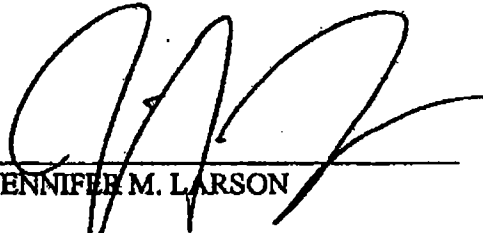
The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Dismiss* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 5th day of August, 2011:

Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive
Suite 220
Brentwood, Tennessee 37027

ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
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Harrisburg, PA 17108-9500


JENNIFER M. LARSON

**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 :

AFFIDAVIT OF JENNIFER M. LARSON

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared JENNIFER M. LARSON, who, being by me first duly sworn, deposed upon his oath as follows:

1. “My name is Jennifer M. Larson. I am an attorney licensed to practice law in Texas. I am over twenty-one (21) years of age, of sound mind and capable of making this Affidavit. I have never been convicted of a felony or crime involving moral turpitude. All matters stated herein are based upon my personal knowledge unless otherwise so stated.

AFFIDAVIT OF JENNIFER M. LARSON
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2. My office address is McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, Texas 75201. I was licensed to practice law in the State of Texas on November 7, 2010, under bar number 24071167. I am admitted to practice in the United States District Court for the Northern District of Texas (2010) and the United States District Court for the Eastern District of Texas (2011). I am a member in good standing in all jurisdictions in which I am licensed to practice law.

3. Through my Motion for Admission Pro Hac Vice (the "Motion"), I seek to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. in the above-referenced action before the Tennessee Regulatory Authority.

4. I have not sought admission in any trial or appellate court of Tennessee within the preceding three years. Further, I have not been denied *pro hac vice* admission or had an admission *pro hac vice* revoked by any court in any jurisdiction.

5. I have not been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee or by any similar lawyer disciplinary agency in any jurisdiction. Further, no disciplinary action or investigation concerning my conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee or before any similar lawyer disciplinary agency in any jurisdiction.

6. I am familiar with the Tennessee Rules of Professional Conduct and the rules governing proceedings before the Tennessee Regulatory Authority.

7. I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any manner arising out of my conduct in any proceeding and I agree to be bound by the Tennessee Rules of


Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

8. Paul S. Davidson and James M. Weaver, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615-850-8942, and Tennessee Bar Number 011789 (Davidson) and Tennessee Bar Number 013451 (Weaver) are associated in accordance with Tennessee Supreme Court Rule 19(g).

9. Per discussion with the Tennessee Regulatory Authority, no fees are required to be paid in connection with the Motion.

10. As stated in the Motion, I will serve the Motion and all exhibits upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee."

FURTHER AFFIANT SAYETH NOT.


JENNIFER M. LARSON

SUBSCRIBED and SWORN TO before me, on this, the 4th day of August, 2011.

[SEAL]




NOTARY PUBLIC in and for the
State of Texas

Commission Expires: 2-25-2013

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

CERTIFICATE OF GOOD STANDING

I, Karen Mitchell, Clerk of the U.S. District Court for the Northern District of Texas, certify that the attorney named below is admitted to practice before this court and is currently in good standing:

Jennifer M. Larson

Bar Number:

Date of Admission:

24071167

December 6, 2010

Witness my official signature and the seal of this court.

Dated: July 29, 2011

Karen Mitchell,
Clerk of Court

By: Penny Hunton
Deputy Clerk

Fee: \$15.00



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MOTION TO DISMISS

Halo Wireless, Inc. ("Halo"), for the sole purpose of bringing to the attention of this tribunal that it completely lacks jurisdiction over the subject matter and over the person of Halo, hereby provides its Motion to Dismiss. Halo is not otherwise appearing, and is not in any manner submitting to or acknowledging this tribunal's jurisdiction or powers. As a result of this Motion, the Tennessee Regulatory Authority ("TRA") must suspend all consideration of the merits and any and all procedural orders pending its threshold decision on jurisdiction.

Nothing in this Motion to Dismiss is intended to address, and shall not be interpreted to address by way of admission or denial, any of the complainants' factual contentions or contentions on the merits. The TRA cannot and should not reach any of these asserted facts or contentions and cannot take up the substantive merits. No answer is or can be required. The TRA must find that its only permissible course of action is to dismiss for want of jurisdiction.

A. INTRODUCTION.

1. The complainants request the TRA to issue a declaratory ruling that "intrastate wireline toll traffic and wireless interMTA traffic sent to them by Halo Wireless for termination to the RLECs' end users is subject to intrastate access charges." (Count I). They also seek a "Cease and Desist Order to prohibit Halo Wireless from providing telecommunications service in the State of Tennessee until such time as the TRA may hold a hearing on this matter." (Count II). The complainants further request an "order directing Halo Wireless to pay all outstanding intrastate access charges including applicable interest." (Count III). Then, the complainants request an order "finding that Halo Wireless has violated T.C.A. § 65-35-102 (2)." (Count IV). Finally, the "Requests for Relief" ask the TRA to "issue an order requiring Halo Wireless and Transcom to issue a security bond in the amount of \$1,000,000 pending the outcome of the TRA decision in this proceeding."

2. These requests each rest on the proposition that Halo lacks authority to provide the services that give rise to the purported traffic, or that Halo's traffic is not "wireless" or "CMRS" because it is claimed to originate on other networks. They implicitly ask the TRA to investigate the scope of Halo's federal authorization, interpret Halo's federal licenses in light of the complainants' alleged facts, and then conclude that Halo is somehow subject to state-level jurisdiction under *state law* because of perceived exceptions to binding and jurisdictional *federal law* that expressly prohibits state regulation of market entry and rates. The complainants assert that their *intrastate* tariffs apply to this traffic, and that Halo is somehow an intrastate access customer. To reach this conclusion, however, the complainants are necessarily asserting that the traffic is not "wireless" or "CMRS" and is *also* not "intraMTA" or otherwise *not* "non-access" traffic as defined by *FCC rules*.

3. The allegations, claims and requests for relief as against Halo are purely and simply an attempted collateral and state-level attack on Halo's federal authorizations. The complainants are necessarily asking the TRA to act in the place of the FCC and find exceptions to binding and exclusive federal rules that would give an opening for state-level regulation and jurisdiction, which they then of course ask the TRA to exercise in punitive and protective fashion.

4. The TRA, however, cannot entertain the complainants' plea for action. The TRA lacks jurisdiction over the subject matter and jurisdiction over Halo's person, property and business. Only the FCC can resolve the threshold questions that could, possibly, then lead to the exercise of state-level jurisdiction and power. The complainants must take their complaint to the FCC, for the FCC has exclusive and primary original jurisdiction. Therefore, the entire case must be dismissed.

B. HALO'S FEDERAL AUTHORIZATION.

5. On January 27, 2009, the FCC issued Halo a *nationwide* license ("Radio Station Authorization" or "RSA"), a copy of which is attached hereto as Exhibit 1, to register and operate fixed and base stations in the 3650-3700 MHz band (a particular "slice" of FCC-controlled radio spectrum) and to support "mobile," "portable" and "fixed" subscriber stations throughout the domestic United States. Halo's service includes "broadband data" and Internet capabilities, but it also includes real-time, two-way switched voice service support that is interconnected with the public switched network. The "common carrier" RSA designation entitles Halo to "interconnect" with other carriers for the purpose of exchanging traffic. See 47 U.S.C. § 332(c)(1)(B); 47 C.F.R. § 20.3 (supplying definitions of "commercial mobile radio service," "interconnected," "interconnected service" and "public switched network").

6. Halo's services that involve end-points in Tennessee are supported by five separate base stations, only two of which are in Tennessee (Amherst and Gainesboro). The other base stations are in Cartersville, Georgia; Greenville, Mississippi; and, Graysville, Alabama. The complainants, therefore, seek an order that Halo "cease and desist" from using equipment located in other states that supports services that traverses a state line to communicate with an end-point in Tennessee. This is clearly beyond the TRA's power and authority.

7. Halo provides "interconnected" "telephone exchange service" (as defined at 47 U.S.C. § 153(47)) and "exchange access" (as defined at 47 U.S.C. § 153(16)). Halo also provides "personal wireless service" (as defined at 47 U.S.C. § 332(c)(7)(C)(i)), because Halo provides "commercial mobile services," "common carrier wireless exchange access services" and/or "unlicensed wireless services" (as defined in 47 U.S.C. § 332(c)(7)(C)(iii)). Halo is conducting all of its activities by virtue and as a result of its *federal* authorization to provide service under its RSA and also pursuant to the FCC's "blanket" permission to provide interstate service by wire or radio in 47 C.F.R. § 63.01(a).¹

8. The FCC has exclusive original jurisdiction to "authorize" the offering of purely or predominately interstate telecommunications service. 47 U.S.C. § 214(a)-(d). The FCC's rules implementing this part of section 214 give automatic and advance permission for a common carrier to provide interstate telecommunications service by wire or radio so long as the common carrier has the necessary authorization for any radio frequencies that it uses to do so. Unlike many states overseeing intrastate services, the FCC does not require prior application for or receipt of a "certificate." See 47 C.F.R. § 63.01(a). Therefore, even if and to the extent that any

¹ Authority for all domestic common carriers.

(a) Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

of Halo's services involve "wireline" communications (which Halo denies), Halo has *federal* authority to provide interstate "wireline" service, including telephone exchange service and exchange access service.

9. Only the FCC can decide whether any particular traffic is or is not "interstate" and subject to its exclusive original jurisdiction. *See Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79 (1959). The FCC is the exclusive "first decider" and must be the one to interpret, in the first instance, whether a particular activity falls within the certificates it has issued. *Id.* at 177; *see also Gray Lines Tour, Co. v. Interstate Commerce Com.*, 824 F.2d 811, 815 (9th Cir. 1987)² and *Middlewest Motor Freight Bureau v. ICC*, 867 F.2d 458, 459 (8th Cir. 1989).³

C. STATE REGULATORY AUTHORITIES HAVE NO JURISDICTION AND NO POWER TO CONSTRUE OR INTERPRET THE BOUNDARIES OF FEDERALLY ISSUED CERTIFICATES OR TO IMPOSE SANCTIONS FOR OPERATIONS CLAIMED TO NOT BE "AUTHORIZED" BY THE FEDERAL CERTIFICATE.

10. Halo's operations that involve communications to or from end-points on the PSTN in Tennessee are being conducted pursuant to FCC authorizations. Halo does not have, is not required to have, cannot be compelled to seek or secure, and will not seek or secure, any state permissions for such services unless and until the FCC requires Halo to do so. The TRA completely lacks any jurisdiction and does not have the power to impose penalties, issue cease-and-desist orders, require a bond, demand that Halo secure a state-level certificate or in any way

² "State regulatory authorities may not assume the power to interpret the boundaries of federally issued certificates or to impose sanctions upon operations assertedly unauthorized by the federal certificate. *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79, 3 L. Ed. 2d 717, 79 S. Ct. 714 (1959). The [federal issuing agency] is entitled to interpret, in the first instance, certificates it has issued. *Service Storage*, 359 U.S. at 177."

³ "[I]nterpretations of federal certificates [which on their faces cover the operations] should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action."

interfere with Halo's federally-authorized activities. Nor can the TRA impose any obligations on Halo relating to operations or compensation, as the FCC has already occupied that field.

11. Halo's federal authorizations to provide wireless and jurisdictionally interstate "wired" or "wireless" service are nationwide in scope. The RSA is a single nationwide blanket authorization. The authorization pursuant to 47 C.F.R. § 63.01(a) is single, unitary and nationwide in scope. Halo is building a nationwide network and intends to provide service in every region.

12. If multiple state commissions took up these issues, it is highly likely several of them would render inconsistent and conflicting rulings on Halo's nationwide business model and characterization under the Communications Act. There is a distinct possibility that one state may rule that Halo can provide service in a certain fashion and under certain specific circumstances, while another state may hold that Halo cannot provide service at all, or must operate under materially different rules. If every state demands a million dollar bond, then Halo's barrier to entry starts at \$50,000,000. The clear result would be a hodge-podge of potentially different and inconsistent regulatory requirements based on state-level interpretations of Halo's one wireless RSA and Halo's FCC-granted authority to provide interstate service. There is one nationwide CMRS license, and therefore, it cannot simultaneously mean several different and inconsistent things, nor can it possibly grant different rights or duties depending on separate and inconsistent rulings by state commissions. A federal license cannot lawfully lead to any obligation to pay a bond to a state commission as the price of exercising the federal right. This tribunal lacks subject matter jurisdiction, and it has no personal jurisdiction over Halo, or Halo's business or property.

13. The FCC has recognized that the possibility of multiple state proceedings – with potential conflicting or inconsistent results on a state-by-state basis – can be so significant that it

impedes investment, slows deployment and ultimately become a barrier to entry.⁴ Halo insists that the present proceeding – like the eight others existing in at least three other states – very clearly presents this situation, and further insists that no state can take any action unless and until the FCC expressly rules the states may do so.

14. If any person – the complainants or this tribunal – has some reason to believe that Halo is providing a service that is not “permitted” by the FCC authorizations, that Halo should or should not render a service or provide that service in only a specific manner, then as a matter of law the sole venue for presentation of that question is the FCC itself. If the complainants believe they are entitled to access charges, then they must first obtain a ruling from the FCC to the effect that access charges are applicable here. Then, and only then, can they file a collection action before the proper venue, prove that their tariffs do actually control and then prove up the damages amount. The complainants cannot drag Halo before a state-level tribunal for litigation

⁴ See, e.g., Declaratory Ruling, *In the Matter of Public Service Company of Oklahoma Request for Declaratory Ruling*, DA 88-544, ¶ 24, 3 FCC Rod 2327, 2329 (rel. Apr. 1988) (finding that “inconsistent state regulation” “would impede development of a uniform system of regulation for Commission licensees.”); Second Report and Order, *In the Matter of Amendment of Parts 2, 22 and 25 of the Commission’s Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; In the Matter of the Applications of GLOBAL LAND MOBILE SAT-ELLITE, INC.; GLOBESAT EXPRESS; HUGHES COMMUNICATIONS MOBILE SATELLITE, INC.; MCCA AMERICAN SATELLITE SERVICE CORPORATION; MCCA SPACE TECHNOLOGIES, INC.; MOBILE SATELLITE CORPORATION; MOBILE SATELLITE SERVICE, INC.; NORTH AMERICAN MOBILE SATELLITE, INC.; OMNINET CORPORATION; SATELLITE MOBILE TELEPHONE CO.; SKY-LINK CORPORATION; WISMER & BECKER/TRANSMIT COMMUNICATIONS, INC.*, Gen. Docket No. 84-1234 RM-4247; File Nos. 1625-DSS-P/L-85 1626-DSS-P/L-85; File Nos. 1627-DSS-P/L-(50)-85 1628-DSS-P-(5)-85; File No. 1629-DSS-P/L-85; File Nos. 1630-DSS-P/L-85 1631-DSS-P-85; File No. 1632-DSS-P/L-85; File Nos. 1633-DSS-P/L-85 1634-DSS-P/L-85 1635-DSS-P/L-85; File Nos. 1636-DSS-P/L-85 1637-DSS-P/L-85 1638-DSS-P-85; File Nos. 1639-DSS-P/LA-85 1640-DSS-P-85; File Nos. 1641-DSS-P/L-85 1642-DSS-P/L-85 1643-DSS-P/L-85 1644-DSS-P/L-85 1645-DSS-P/L-85; File Nos. 1646-DSS-P/L-85 1647-DSS-P/L-85; File Nos. 1648-DSS-P/L-85 1649-DSS-P/L-85; File Nos. 1650-DSS-P/L-85 1651-DSS-P/L-85 1652-DSS-P-85, FCC 86-552, ¶ 40, 2 FCC Rod 485, 491 (rel. Jan. 1987) (finding that “permitting states to impose their individual regulatory schemes over” an FCC licensee “would not only be impractical but would seriously jeopardize the operation of the system. Requiring the consortium to adhere to fifty potentially conflicting” standards “would render implementation” “virtually impossible.”); Memorandum Opinion and Order, *In the Matter of Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission’s Rules Concerning Use of Subsidiary Communications Authorization*, BC Docket No. 82-536, FCC 84-187, ¶ 20, 98 F.C.C.2d 792, 800 (rel. May 1984) (finding that individual state regulations over a wireless service can impede or create a barrier to entry when the network is regional or national, and that state regulations over a nationwide network would constitute a direct burden on interstate communications).

over the scope of Halo's federal permissions. No state commission has the jurisdiction to address this question or to interpret Halo's FCC authorizations and then find some putative "exception" or "limitation" that is then used to subject Halo to state licensing requirements, state-level entry regulation, state rate regulation or a state order to pay intrastate access charges.⁵

15. Nor can a state commission require Halo to develop some means by which to separate its operations between "interstate" and "interstate." "Service providers are not required to develop a mechanism for distinguishing between interstate and intrastate communications merely to provide state commissions with an intrastate communication they can then regulate." *Minn. PUC v. FCC*, 483 F.3d 570, 578 (8th Cir. 2007). Finally, no state commission can require Halo to post a bond to secure payment of some as-yet unliquidated amount of putative access charge liability.

16. Every Count and the entirety of complainants' request for relief inescapably and completely raises questions and issues within (a) the FCC's exclusive original jurisdiction over market entry (licensing) of radio based services, (b) the FCC's exclusive original jurisdiction and power to prescribe rules relating to the process for and rules governing "interconnection" between radio service providers and local exchange carriers, (c) the FCC's exclusive original

⁵ Although the complaint requests a declaration that the intrastate tariffs apply and an order that Halo pay them, the first-order question is whether this commission has the power to even consider the matter. Since the commission completely lacks jurisdiction over Halo, it cannot. The question whether the complainants' intrastate access tariffs can or could apply starts (but does not end) only if the absolute prohibition against access charges for non-access traffic in 47 C.F.R. § 20.11(d) does not apply. The TRA has no jurisdiction or power to interpret or apply 47 C.F.R. § 20.11 at all. The TRA most certainly lacks the power to find unstated exceptions or limitations to the FCC's holding and rules providing that if a call is processed by a base station in the same MTA as the terminating location then it is intraMTA and subject to § 251(b)(5) and not the access regime. See First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, ¶ 1044, 11 FCC Rod 15499 ("Local Competition Order") (subsequent history omitted) ("...For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer. As an alternative, LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party."). The complainants' argument and position entirely depends on the proposition that these binding federal rules do not apply, based on some inherent or potential "exception" or "interpretation" that has not yet been articulated by the FCC. Their jurisdictional problem is that *only the FCC* can "find" this asserted exception.

jurisdiction over market entry to provide interstate communications services by wire and/or radio, and/or (d) the FCC's exclusive original jurisdiction to prescribe "compensation" terms governed by sections 201, 251(b)(5) and 251(g). See § 251(d)(1)⁶ and § 251(g).⁷

17. The FCC has exclusive original jurisdiction over communications by wire or radio that are interstate. See 47 U.S.C. § 152. Additionally, under section 152 (also called "Section 2 of the Act"), the FCC has exclusive original jurisdiction over the authorization to communicate by radio on an interstate or intrastate basis and then the exclusive jurisdiction over regulation of radio communications themselves. See, e.g., 47 U.S.C. §§ 152(a), 201, 202, 203, 214, 332.

18. Section 152(b) originally reserved rights to the states to regulate intrastate communication service by wire or radio. Section 332(c)(3) (passed in 1993) expressly preempted state regulation over market entry and the rates charged by mobile service providers. Section 332(c)(7) allows state and local governments to retain some zoning authority over "siting" of "personal wireless service facilities," but section 332(c)(7)(B)(i)(II) expressly denies any state or local government the power to take any action that prohibits or has the effect of prohibiting the provision of personal wireless services. Halo provides personal wireless services, and thus, no

⁶ IMPLEMENTATION.--(1) IN GENERAL.--Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

state or local government may prohibit, or take action that has the effect of prohibiting, Halo's provision of its service. The complainants are each contending that Halo lacks authority to provide its personal wireless service (CMRS), and they are seeking or intend to seek a *state regulatory authority* order that Halo "cease and desist" from using its already-installed facilities to provide its personal wireless services. Therefore, the complainants are requesting that a state prohibit, or take action having the effect of prohibiting, Halo's personal wireless service.

19. States have no authority, and have never had the authority, to authorize or regulate the use of radio spectrum. The FCC has exclusive original jurisdiction over radio matters, including whether to authorize the use of radio spectrum and the purposes and ends for which any spectrum is used. If a party contends that a spectrum licensee is acting in a manner inconsistent with the scope of its radio station authorization, then the sole and exclusive venue to resolve and address that contention is the FCC. The complainants, however, contend in various ways that Halo lacks authority to use spectrum under its federal license, or that its license does not contemplate or authorize the services Halo is providing. The complainants are requesting that the TRA "interpret" the scope of Halo's federal rights to use radio spectrum and/or provide jurisdictionally interstate service in a limiting fashion so as to exclude the activities they complain of, and then impose state-level regulations and orders on that activity, including a "cease and desist" requirement pending state certification. The TRA completely lacks this power.

20. State regulatory authorities do not have and may not assume the power to interpret the boundaries of federally issued certificates or to impose sanctions upon operations assertedly unauthorized by the federal certificate. *See Service Storage & Transfer Co. v. Virginia, supra* 359 U.S. at 178-79. The FCC is the exclusive "first decider" and must be the one to interpret, in the first instance, certificates it has issued. *Id.* at 177; *Gray Lines Tour, Co. v.*

Interstate Commerce Com., *supra* 824 F.2d at 815; *Middlewest Motor Freight Bureau v. ICC*, *supra* 867 F.2d at 459.

21. A person may bring an action complaining of a violation of the Communications Act pursuant to section 206. The petitioner has a choice of whether to bring the action in *federal court* under section 207, or before the *FCC* under section 208. The complaint is ultimately, and essentially an assertion that Halo is violating the Communications Act, exceeding the scope of its federal authorizations and conducting activity that incurs an access charge because of claimed "exceptions" or "interpretations" of the Communications Act and FCC rules. The complaint is dressed up using state law claims, but it is in fact, and must be construed to be, a section 206 complaint because if Halo's activities *do* fall under its authorizations and *do not* incur an access charge under *federal* law, then no contrary state laws or rules can lawfully be enforced. There is, however, no provision and no authority, that would allow a party to file a case with a state regulatory authority alleging a violation of the Communications Act or FCC rules, or seeking a declaratory ruling involving questions about the Communications Act or FCC rules.

22. State commissions have some residual jurisdiction over purely intrastate communications under section 152(b). That authority, however, was considerably reduced by the passage of the 1993 amendments to the Communications Act which expressly preempted state-level regulation of or restriction of market entry and state-level regulation of wireless service rates. Further, the 1996 amendments to the Act even further circumscribed state commission authority, even for purely intrastate activity. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378, n. 6 (1999).⁵ Congress delegated only certain duties and powers to state commissions as part

⁵ "JUSTICE BREYER appeals to our cases which say that there is a "presumption against the pre-emption of state police power regulations," *post*, at 10, *quoting from Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 518, 120 L. Ed. 2d 407, 112 S. Ct. 2608 (1992), and that there must be "clear and manifest" showing of congressional intent to supplant traditional state police powers," *post*, at 10, *quoting from Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218,

of the 1996 amendments, and then required that when states are exercising these limited duties they limit the activity to implementing the FCC's rules.⁹ The complaint does not claim to be founded on section 252 of the Communications Act, and thus, the TRA completely lacks jurisdiction because all of the issues raised are FCC-exclusive issues that do not fall within the states' remaining residual power or their delegated authority. In any event, the complainants are essentially and ultimately requesting that the TRA *ignore* and effectively *overturn* the FCC's rules and specific parts of the Communications Act. The TRA lacks the power and the jurisdiction to accept the complaint because it cannot even begin to consider whether it should do what the complainants request.

23. Unlike many other commercial radio networks, Halo's network is all "Internet Protocol" ("IP") based, which means that it incorporates the most modern technology. The network supports both "voice" service and "broadband" Internet or private IP network based services. The network uses what is known as "Wi-MAX," which is one of the two competing "Fourth Generation" ("4G") IP-based radio based services (the other being "LTE"). Complaint ¶ 70.

230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947). But the question in these cases is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions' participation in the administration of the new *federal* regime is to be guided by federal-agency regulations. If there is any "presumption" applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange. The appeals by both JUSTICE THOMAS and JUSTICE BREYER to what might loosely be called "States' rights" are most peculiar, since there is no doubt, even under their view, that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel. This is, at bottom, a debate not about whether the States will be allowed to do their own thing, but about whether it will be the FCC or the federal courts that draw the lines to which they must hew. To be sure, the FCC's lines can be even more restrictive than those drawn by the courts -- but it is hard to spark a passionate "States' rights" debate over that detail." (emphasis added)

⁹ Halo acknowledges there are a few instances where state-level rules can be applied as part of a § 252 arbitration or in a "post-ICA dispute." But those rules cannot be inconsistent with FCC regulations, and they cannot serve to override any provision in the Communications Act. In any event, the complaint is not founded on § 252 and it does not purport to be a § 252(b) arbitration petition or a post-ICA dispute.

24. Because Halo has deployed and is seeking to use the kind of “new technologies and services” addressed by 47 U.S.C. § 157, which are presumptively in the public interest, the FCC is the sole entity that can resolve any questions about whether Halo has the “authority” to provide services using this technology. Under section 157(a), “[a]ny person or party (other than the [FCC]) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest.” 47 U.S.C. § 157(a). The FCC (to the exclusion of the states) has exclusive original jurisdiction to “determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed.” *Id.* at § 157(b). The complaint effectively requests that this state tribunal hold that Halo’s new technology services should not be allowed, unless Halo submits to multiple state-level “public interest” determinations and complies with each individual state’s “conditions.” The Communications Act does not countenance or allow this kind of state-level proceeding. The states have been preempted and have no regulatory role.

25. Further, Halo’s new technology also supports “broadband” information service. The FCC has declared that wireless-based broadband information services are jurisdictionally interstate and subject to the FCC’s exclusive original jurisdiction, to the exclusion of the states.¹⁰

26. Under the FCC’s rules, when carriers are indirectly interconnected, all “non-access” traffic is subject to a “no compensation” regime unless and until the indirectly interconnected carriers enter into a written ICA.¹¹ The FCC has promulgated a rule allowing

¹⁰ Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT 07-53, 22 FCC Red 5901, 5911, ¶ 28 (2007).

¹¹ See Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, note 57 20 FCC Red 4855 (2005) (“T-Mobile Order”). (“Under the amended rules,

ILECs to send a written "request for interconnection" that "invoke[s] the negotiation and arbitration procedures contained in § 252 of the Act" to a CMRS provider. *See* 47 CFR § 20.11(e). At that point, the carriers must negotiate terms implementing their respective duties under section 251(a), (b) and, if applicable, (c). If the parties are unable to resolve all issues through negotiation, the incumbent may request that the CMRS provider "submit to arbitration by the state commission." *See* 47 C.F.R. § 20.11(e).

27. The ILEC complainants have not implemented this FCC-prescribed remedy, and they do not base any part of their complaint on an assertion that Halo and the complainants are operating within the section 252 context. The complaint is not based on the TRA's arbitral powers under section 252(b) or its power to approve interconnection agreements under § 252(e). This is not a "section 252" proceeding, and therefore, the TRA cannot assert or find jurisdiction based on section 252.

28. The FCC has promulgated a rule (47 C.F.R. § 20.11(d)) that prohibits local exchange carriers from imposing access charges pursuant to tariff on "non access" traffic. In the order promulgating the rule, the FCC also reiterated its definitions of "access" and "non-access."¹² Further, under the Communications Act, "exchange access" charges apply only to "telephone toll service" and the FCC's rules and rulings have specifically set out the limited circumstances under which a CMRS provider will be providing "telephone toll service," and

however, in the absence of a request for an interconnection agreement, no compensation is owed for termination.")

¹² *See T-Mobile Order*, note 6 (FCC 2005) ("the term "non-access traffic" refers to traffic not subject to the interstate or intrastate access charge regimes, including traffic subject to section 251(b)(5) of the Act and ISP-bound traffic.")

thus, potentially subject to access charges.¹³ If the complainants want to secure a change to the FCC's rules, they must apply to the FCC.¹⁴

29. The complainants deny that Halo is "wireless" and/or "CMRS" and they also at least implicitly assert that the traffic is not "non-access" traffic, and therefore, not subject to the prohibition on access billings in 47 C.F.R. § 20.11(d). The states do not have any authority to interpret, apply, enforce or construe section 47 C.F.R. § 20.11, because it derives from the FCC's exclusive authority under section 201 and section 332. Therefore, the complainants' attempt to submit this issue to a venue other than the FCC and have a state commission ignore, reject or amend the FCC's rules is improper because it necessarily rests on state level jurisdiction over these questions when there is no such jurisdiction.

30. The complainants' *state regulatory authority* filing seeks extraordinary relief based on their interpretations of Halo's *federal* authorizations and Halo's insistence that the

¹³ See *Local Competition Order* ¶ 1043 and note 2485:

1043. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an EXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges.

Note 2485: "[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 carrier's carrier ['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). See also *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Service*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) (concluding that there should be no distinction between incumbent LECs' interconnection arrangements with cellular carriers and those with other CMRS providers).

¹⁴ See, e.g., Order on Remand and Report and Order, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, 16 FCC Rcd 9151, 9171-72, para. 82 (2001) (*ISP Remand Order*), remanded but not vacated by *WorldCom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002) (stating "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.")

complainants honor the *federal* rules. The entire matter is subject to the exclusive original jurisdiction of the FCC, and the state completely lacks jurisdiction.

D. STATES HAVE NO JURISDICTION TO DECIDE IF A CUSTOMER IS OR IS NOT AN ESP OR IF ACCESS IS DUE FOR TRAFFIC TO OR FROM AN ENTITY THAT CLAIMS ESP STATUS.

31. Complainants imply that Halo cannot serve nor has no authority to serve ESPs, such as the alleged customer Transcom, and that Halo's service is "illegal." Thus, the complaint effectively asserts that Halo is not authorized to provide service to an ESP and seeks a state commission order that Halo "cease and desist" from operating its business. Complaint ¶¶ 58-61, 64; 74-79. The complainants have also effectively raised the issue by claiming that the majority of Halo's traffic is subject to access charges. Complaint ¶¶ 58-60, 64-73, and 81-86.

32. This specific issue is within the FCC's exclusive original jurisdiction because the complainants are raising the issue in connection with one alleged Halo customer that even the complainants admit claims to be an Enhanced Service Provider. ESPs' services to their customers have been held to be jurisdictionally interstate, and not subject to state regulation.¹⁵

¹⁵ The complainants admit that this alleged customer claims ESP status. ESP traffic is jurisdictionally interstate because it melds a traditional circuit-switched local telephone call over the PSTN and Halo's and its ESP customer's packet switched IP-based Internet communication. See e.g., Declaratory Ruling, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 99-38, ¶ 18, 14 FCC Rod 3689, 3702 (1999) vacated and remanded other grounds, *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000); Order on Remand, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 01-131, ¶ 52, 16 FCC Rod 9151, 9175, remanded but not vacated by *WorldCom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002). Even though the D.C. Circuit reversed these early FCC orders, it has consistently accepted that "Internet" communications are wholly and exclusively interstate. See *WorldCom*, 288 F.3d at 431; *Bell Atlantic*, 206 F.3d at 5 ("There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate.") The D.C. Circuit clearly adopted and approved the FCC's jurisdictional finding in *Core Communications v. FCC*, 592 F.3d 139, 144 (D.C. Cir. 2010). In other contexts, the FCC has likewise found that services that offer access to the Internet are jurisdictionally interstate services. In 1998, for example, the FCC found that ADSL service is jurisdictionally interstate. See Memorandum Opinion and Order, *GTE Tel. Operating Cos., CC Docket No. 98-79*, 13 FCC Rod 22466, 22481, ¶ 28 (1998) (finding that GTE's ADSL service is subject to federal jurisdiction and is an interstate service); Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, 17 FCC Rod 4798, 4832, ¶ 59 (2002) (finding that, "on an end-to-end analysis," "cable modem service is an interstate information service"); *Wireline Broadband Internet Access Order*, 20 FCC Rod 14853 at 14914,

33. Regulatory classification as an ESP *vel non* is based exclusively on *federal law*, and therefore, the question of whether this alleged customer is – or is not – an ESP can only be resolved by the FCC. In the same way the TRA cannot interpret the scope of Halo's federal rights, the TRA lacks jurisdiction or authority to determine this alleged customer's regulatory classification under *federal law*. The FCC has preempted state commission authority over ESPs and ESP services, which necessarily means that a state commission cannot undertake to decide in the first instance that an entity "is not" an "ESP" except in certain narrow circumstances not present here.

34. Under binding FCC rules and the Communications Act, enhanced/information services are by definition not "common carrier" services, nor are they "telecommunications" or a "telecommunications service." The TRA completely lacks jurisdiction to take up the questions of whether Halo's purported ESP customer "should" or "can" be treated as "not ESP" and instead deemed to be "IXC." The TRA cannot determine whether Halo has "authority" to serve an ESP, or whether intrastate access "should" or "can" be applied to any traffic associated with a putative ESP. Only the FCC can decide (a) whether this alleged entity "is" or "is not" an ESP, and (b) whether exchange access charges can be applied to this traffic. Finally, ESPs' services are jurisdictionally interstate, and therefore, there cannot be any "intrastate communications service" in any event until the FCC says that is a legal possibility. The TRA completely lacks jurisdiction over the entire question.

para. 110 (2005), *aff'd by Brand X*, 545 U.S. 967; Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT 07-53, 22 FCC Rcd 5901, 5911, ¶ 28 (2007); Memorandum Opinion and Order, *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC 06-10, 21 FCC Rcd 13281, 13288, ¶ 11 (2006). The FCC likewise held that VoIP services are jurisdictionally interstate, employing the same end-to-end analysis reflected in those other orders. *Vonage Order*, 19 FCC Rcd at 22413-14, ¶¶ 17-18.

35. The service that a common carrier (such as Halo) provides to an ESP has also been held to be jurisdictionally interstate. *See, e.g., Core Communs., Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010). Thus, Halo's service to this purported customer that (according to the complainants) claims ESP status is jurisdictionally interstate and is not subject to state review or regulation. As a result, no state can lawfully prohibit or restrict Halo's market entry to provide service to ESPs by imposing a state certification requirement or imposing state-level regulations, requirements or restrictions. A state commission completely lacks any jurisdiction or power to order a carrier to "cease and desist" from providing a jurisdictionally interstate service, particularly when it is being provided pursuant to an FCC license or blanket permission.

36. The FCC has expressly ruled in several cases that CMRS providers may support "ISP" traffic,¹⁶ and the FCC has made special provisions in its rules that expressly allow CMRS providers to serve ESPs by being a "numbering partner" for them. Indeed, the FCC required LECs like the complainants to "port" numbers in to a CMRS provider, upon request, when the CMRS provider is serving the ESP, and the FCC made special provisions within its "porting" rules to account for CMRS telephone exchange service to ESPs.¹⁷ The complainants' attempts to obtain contrary and inconsistent rulings at the state level unlawfully intrude on the FCC's exclusive original jurisdiction and constitute an impermissible collateral attack.

¹⁶ *See T-Mobile Order*, n. 6 (defining "non-access traffic" as including "ISP-bound" traffic).

¹⁷ *See Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, In the Matter of Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, WC Docket No. 07-243; CC Docket Nos. 95-116, 99-200; WC Docket Nos. 04-36, 07-244, FCC 07-188, ¶¶ 34-35, 22 FCC Rcd 19531, 19549-19550 (2007); *Small Entity Compliance Guide, Local Number Portability (LNP)*, CC Docket Nos. 95-116, 99-200, WC Docket Nos. 07-243, 07-244, 04-36, DA 08-1317, ¶¶ 3-4 (2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-1317A1.pdf. *See also* 47 C.F.R. §§ 52.23(h)(1), (2), 52.31, 52.34.

37. Complainants assert access charges are due because Halo is transmitting traffic from an entity claiming ESP status whose traffic may include calls that "actually" originate from another location and when viewed "end-to-end" the traffic is "interexchange." They then say *some* of the traffic is intrastate. Complaint ¶ 83. However, the Act makes clear that traffic to and from ESPs is exempt from access charges notwithstanding any "interexchange" characteristic. The reason is that ESPs provide "information service" which is not a telecommunications service and as a consequence cannot be "telephone toll" which as a matter of law is the only kind of traffic subject to access charges. Further, the FCC has exercised its exclusive § 201 jurisdiction to promulgate rules addressing the "appropriate" intercarrier compensation as between two common carriers that collaborate to support a call to or from an ESP. The TRA has no jurisdictional basis to address whether the FCC's rules apply or do not apply, since one can only begin to start addressing the "access" question *after* one decides the FCC's "wireless" rules and the so-called "ESP Exemption" do not apply. These, however, are FCC-exclusive issues, and the TRA lacks jurisdiction over them, and it also lacks personal jurisdiction over Halo.

38. The foregoing is particularly so given that Halo asserts it is providing a federally-authorized "wireless" "CMRS" service to the putative ESP. Even if, however, Halo's service to the ESP is wrongly considered to be "wireline," it is still "interstate" wireline until the FCC says it is not, given that Halo has automatic and advance permission to serve ESPs under 47 C.F.R. § 63.01(a). Complainants' assertion that Halo "lacks authority" to serve ESPs unless and until Halo obtains a state-level certificate, and their attempts to obtain a state commission ruling that this is so, therefore, unlawfully intrudes on and frustrates Halo's *interstate* authorization from the FCC and by extension the FCC's exclusive original jurisdiction over this dispute. The

complainants' request for a state commission "cease and desist" order is plainly a request that the state prohibit a personal wireless service, in violation of § 332(c)(7).

E. STATE COMMISSIONS LACK JURISDICTION TO CONTEMPLATE WHETHER TO ORDER OR AUTHORIZE BLOCKING OF CMRS OR INTERSTATE TRAFFIC.

39. The complainants, in the "request for relief," request an "order" by the TRA authorizing them to block Halo traffic. Request for Relief ¶ 6. They are asking the TRA to approve blocking of jurisdictionally interstate service, and they seek to deny Halo the benefits of its *federal* right to interconnection as a CMRS provider. Any state order would be void. Further, any action by the complainants in reliance on such order would result in damages to Halo.

40. Blocking is an unjust and unreasonable practice under section 201(b). The complainants seek state-level permission to violate section 201(b) of the Communications Act by engaging in the unjust and unreasonable practice of blocking interstate traffic or CMRS traffic without advance permission by the FCC. This is obviously not something a state can or should do. The FCC has ruled that carriers cannot block interstate traffic absent specific FCC authorization and doing so is an unjust and unreasonable practice that violates section 201(b). *See, e.g., Declaratory Ruling and Order, In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, WC Docket No. 07-135, DA 07-2863, ¶¶ 5-6, 22 FCC Rcd 11629 (rel. June 28, 2007);¹⁸ Memorandum Opinion and Order, *Telecommunications Research and Action Center and Consumer Action v. Central Corporation et al.*, File Nos. E-88-104, E-88-105, E-88-106, E-88-107, E-88-108, DA 89-237, ¶¶ 12, 15, 4

¹⁸ "...call blocking is an unjust and unreasonable practice under section 201(b) of the Act...Specifically, Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way."

FCC Red 2157, 2159 (1989) (Common Carrier Bureau).¹⁹ Similarly, no state can grant permission for a LEC to not interconnect (or to disconnect interconnection) that exists pursuant to section 332(c)(1)(B). A LECs' disconnection of a CMRS provider would violate section 201, because section 332(c)(1)(B) rests on and incorporates section 201.

41. Any block would also violate section 201(b) for a separate and different reason. As explained elsewhere, complainants assert that some of the traffic is "wireline originated" "toll" traffic. They claim the right to block passage of this traffic based on state law. The cited state rules and laws do not apply to this set of circumstances, but even if they did, they would be pre-empted given that the traffic is interstate,²⁰ given that even according to the complainants the traffic is VoIP traffic coming from one of Halo's customers for whom Halo serves as a "numbering partner." The complainants would end up blocking what they acknowledge to be VoIP traffic, and that is a violation of section 201(b).²¹

42. Blocking in this situation without advance FCC permission is also a violation of the FCC's rules implementing section 214 of the Communications Act (47 C.F.R. §5

¹⁹ "After consideration of the arguments and evidence advanced by the parties to this proceeding, we are persuaded that the practice of call blocking, coupled with a failure to provide adequate consumer information, is unjust and unreasonable in violation of Section 201(b) of the Act...We find that call blocking of telephones presubscribed to the defendant AOS providers or other carriers is an unlawful practice. Accordingly, we order the complainants to discontinue this practice immediately. The complainants must amend their contracts with call aggregators to prohibit call blocking by the call aggregator within thirty days of the effective date of this Order."

²⁰ Halo is not at this point answering or raising any potential defenses or affirmative defenses. Halo is asserting lack of jurisdiction to decide whether the traffic is "not" interstate. Thus, Halo does not bear any burden of proof. Nor, strictly speaking, can the complainants be given the burden or opportunity to "prove" in this proceeding that the traffic is intrastate. The commission simply cannot consider any of this, for it lacks jurisdiction over the entire question of whether the traffic is "not interstate." In any event, even the complainants acknowledge in ¶ 68 that under their own theory at least some of the traffic is interstate. This commission cannot authorize blocking of interstate and/or CMRS traffic.

²¹ See Order, *In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110; Acct. No. 200532080126; FRN: 0004334082, DA 05-543, 20 FCC Red 4295, 4296 (2005) (Enforcement Bureau) (Investigation and consent order regarding violation of § 201(b) with respect to the "blocking of Voice over Internet Protocol ("VoIP") applications, thereby affecting customers' ability to use VoIP through one or more VoIP service providers.")

63.60(b)(5), 63.62(b) and (e) and 63.501). Part 63 rules address a carrier's desire to cease the interchange of traffic with another carrier, and that is precisely what would occur here. Under FCC rules, a carrier that wants to cease interchanging traffic must seek advance permission from the FCC to do so, and there are specific showings that must be made. *See, e.g.*, 47 C.F.R. § 63.60(b)(5), § 63.62(b) and (e), § 63.501. In this regard, the applicant must state whether any other carriers consent (§ 63.501(p)).²² Halo does not so consent.

43. Any decision by the complainants to proceed with blocking under the auspices of a void state order would be a clear violation of these rules. The FCC would probably be interested in knowing what the state commission thinks about the topic, but a void state commission "order" could not possibly immunize the carrier from damages.

44. The state does not have jurisdiction over section 214 or the FCC's rules relating to the interchange of interstate and/or CMRS traffic. Any state order purporting to authorize the blocking of interstate and/or traffic would be void, and provide no basis for immunity if the complainants then proceed to block. While the FCC may consider a state commission's opinion, it has no binding effect. *Gray Lines Tour*, *supra* 824 F.2d at 815;²³ *Motorola Communications &*

²² The applicant must also give notice to the involved state commission. 47 C.F.R. § 63.71(a). The state commission can presumably become a party to the FCC proceeding and comment on the application. These rules do not contemplate an applicant seeking a state regulator's permission to cease interchange of interstate traffic in the first instance.

²³ "The question, however, is not whether deference should be accorded a decision of the Nevada Commission. The question is one of jurisdiction. The issue which the ICC was called upon to decide was whether the Hoover Dam tours, as conducted by the interstate carriers, were within the scope of the operating authority the carriers held under their ICC certificates. The resolution of that question is within the jurisdiction of the ICC. HNSState regulatory authorities may not assume the power to interpret the boundaries of federally issued certificates or to impose sanctions upon operations assertedly unauthorized by the federal certificate. *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79, 3 L. Ed. 2d 717, 79 S. Ct. 714 (1959). The ICC is entitled to interpret, in the first instance, certificates it has issued. *Service Storage*, 359 U.S. at 177; *see also E.E.O.C. v. Children's Hospital Medical Center of Northern California*, 719 F.2d 1426, 1429 (9th Cir. 1983) ('the question of jurisdiction is, in the first instance, for the agency and not the courts'). The ICC correctly determined that it had jurisdiction to determine whether the Hoover Dam tours as conducted by ACT, Interstate and Happy Time were valid interstate operations within the scope of their ICC-issued certificates. The determination by the ICC that these interstate carriers were operating within the scope of their ICC certificates, notwithstanding the decision of the Nevada Commission, did not

Electronics, Inc. v. Mississippi Public Service Com., 515 F. Supp. 793, 795-796 (S.D. Miss. 1979), *aff'd* *Motorola Communications v. Mississippi Public Service, Comm.*, 648 F.2d 1350 (5th Cir. 1981).²⁴ The TRA has no jurisdiction over the request to "order" blocking and the matter must be dismissed.

F. THE TRA'S JURISDICTION UNDER STATE LAW.

45. The TRA is a state regulatory agency organized pursuant to the laws of Tennessee.²⁵ As a state agency, the TRA is wholly a creature of statute.²⁶ Its jurisdiction is limited to the specific persons and issues identified in its enabling legislation.²⁷ Although the TRA's authority and jurisdiction can be modified by judicial interpretations of the enabling legislation, the TRA may not expand its jurisdiction unilaterally or address matters or parties

violate the policy statements contained within 49 U.S.C. § 10101."

²⁴ "This Court, having considered the arguments of the parties, views the Mississippi Public Service Commission's application of Miss.Code § 77-3-3 (1972) to plaintiff Motorola as an illegal attempt to usurp jurisdiction to regulate communication activity that is preempted by the Federal Communications Commission. ... The FCC has exclusive jurisdiction to 'classify radio stations ... prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class ... encourage the larger and more efficient use of radio in the public interest ... (and) make such rules and regulations and prescribe such restrictions and conditions ... as may be necessary to carry out the provisions of this Act....' 47 U.S.C. § 303(a), (b), (g), (r) (1970)."

²⁵ See Tenn. Code Ann. § 65-4-104.

²⁶ See *Tennessee Pub. Serv. Comm'n v. S. Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977) (holding "[a]ny authority exercised by the Public Service Commission must be as the result of an express grant of authority by statute or arise by necessary implication from the expressed statutory grant of power"); see also *Tennessee Cable Television Ass'n v. Tennessee Pub. Serv. Comm'n*, 844 S.W.2d 151, 159 (Tenn. Ct. App. 1992) (affirming "the Commission's powers remain rooted in its enabling legislation, and so its actions must be harmonious and consistent with its statutory authority") (internal citations omitted); and *BellSouth Telecommunications, Inc. v. Greer*, 972 S.W.2d 663, 680 (Tenn. Ct. App. 1997) (affirming "it [The Commission] has no authority or power except that found in the statutes").

²⁷ See *Williams v. Am. Plan Corp.*, 216 Tenn. 435, 443, 392 S.W.2d 920, 924 (1965) (holding "it is the general rule that no intent may be imputed to the legislature in the enactment of a statute other than such as supported by the face of the statute within itself"); see also *Wayne County v. Tennessee Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 282 (Tenn. Ct. App. 1988) (holding the authority vested in any such administrative agency "must have its source in the language of the statutes themselves").

beyond the jurisdiction afforded to it by its enabling legislation and judicial interpretations thereof.²⁸

46. In other words, a TRA cannot adjudicate a dispute when it lacks statutory authority to support the assertion of jurisdiction over the specific persons who are involved in the dispute and over the specific subject matter raised by the dispute. Under Tennessee law, *in personam* jurisdiction over a party generally can be waived.²⁹ In order for a party to avoid waiver of *in personam* jurisdiction, objections to the tribunal's assertion of such jurisdiction must be raised by the relevant party early enough in the case to allow the tribunal to rule on that issue prior to any substantive actions being taken.³⁰ Once such an objection has been raised, the tribunal must determine the relevant jurisdictional facts and make a determination as to its jurisdiction before continuing with the proceeding.³¹ The scope of any tribunal's jurisdiction is governed first by the United States Constitution.³² However, a tribunal's jurisdiction may be further governed by state legislation and judicial interpretation.³³

²⁸ See *Tennessee Cable Television Ass'n.*, 844 S.W.2d at 163 (holding that the court "may vacate an agency's decision in a contested case when the agency's procedure violates statutory provisions or is otherwise unlawful"); see also Tenn. Code Ann. § 4-5-322(h)(1)-(h)(3).

²⁹ *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (affirming that under Tennessee law, personal jurisdiction, unlike subject matter jurisdiction, may be waived).

³⁰ *Id.* at 676 ("Waiver occurs only if there is no objection to personal jurisdiction in the first filing, either a Rule 12 motion or an answer.").

³¹ See *Brown v. Brown*, 198 Tenn. 600, 623 (Tenn. 1955) (recognizing well-established rule that jurisdiction over a party must be established before a tribunal can enter any ruling binding the party or the ruling is declared null and void).

³² U.S. CONST. amend. XIV, § 1.

³³ See, e.g., *Deaderick Paging Co., Inc. v. Tennessee Pub. Serv. Comm'n*, 867 S.W.2d 729, 731 (Tenn. Ct. App. 1993) (stating "[T]he powers of the Commission must be found in the statutes. If they are not there, they are non-existent").

47. As noted above, in the context of a state agency, the scope of its jurisdiction is limited by the agency's enabling legislation.³⁴ Thus, the state agency may assert *in personam* jurisdiction only over the specific classes of persons or entities that are identified by statute, as may be interpreted by the courts.³⁵ Because an agency's *in personam* jurisdiction is limited by statute, the mere fact that a person has routine contact with an agency is irrelevant to whether that person falls within the class prescribed by statute over which the agency can assert *in personam* jurisdiction.

48. Unlike *in personam* jurisdiction, subject matter jurisdiction cannot be waived by consent of the parties.³⁶ Subject matter jurisdiction relates to the authority of the tribunal to address the particular issues raised by the dispute.³⁷ Any party or the tribunal may raise the issue of subject matter jurisdiction at any time.³⁸ When subject matter jurisdiction is brought into question, the tribunal *must assure itself of its subject matter jurisdiction before it addresses any other matters in the proceeding*, and if the tribunal finds that it does not have subject matter jurisdiction, then the only authority possessed by the tribunal is that authority necessary to immediately dismiss the action.³⁹

³⁴ See note 27, *supra*.

³⁵ See *id.*

³⁶ *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 1237 ("subject-matter jurisdiction, because it involves court's power to hear case, can never be forfeited or waived..."); *Meighan v. U.S. Sprint Comm'ns Co.*, 924 S.W.2d 632, 639 ("[s]ubject matter jurisdiction...cannot be waived...").

³⁷ See *Landers*, 872 S.W.2d at 675.

³⁸ *Gillespie v. State*, 619 S.W.2d 128, 129 (Tenn. Ct. App. 1981) (stating that "under Rule 12.08, Tennessee Rules of Civil Procedure, the lack of subject matter jurisdiction may be raised at any time by the court or by the parties.").

³⁹ *Wilson v. Sentence Info. Services*, 2001 WL 422966 (Tenn. Ct. App. Apr. 26, 2001) (holding that "[w]hen a court lacks subject matter jurisdiction over the case, it must dismiss the case without reaching the merits of the complaint").

49. The complainants ultimately contend that Halo is not acting pursuant to any federal authorization and is "merely" the complainants' "customer." The Tennessee legislature did not see fit to turn the TRA into a court, or to allow it to award damages payable from a customer to a regulated entity. The TRA does not have state-level jurisdiction over complaints filed by LECs against their "mere" customers. The TRA cannot entertain a collection action against a customer not subject to its regulatory authority, and it cannot order a non-regulated entity to post a bond, or pay a disputed bill.

50. The complaint attempts to get around this problem by asserting that Halo is subject to the TRA's regulatory authority. But that can only be the case if Halo is not acting within and consistent with its *federal* authority. And, as noted above, the TRA lacks jurisdiction, power or authority to decide that question.

51. The TRA lacks subject matter jurisdiction. The TRA lacks personal jurisdiction over Halo and over Halo's business and property. Therefore, the case must be dismissed.

G. THE TRA DOES NOT HAVE JURISDICTION OVER TCA 65-35-102(2)

52. Count IV (¶¶ 88-89) asserts that Halo violated TCA 65-35-102(2).⁴⁰ The complainants accuse Halo of "Obtain[ing] or attempt[ing] to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefore." The

⁴⁰ The provision in issue provides that "It shall be unlawful for a person to ... (2) Obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefor, or for any person to cause another to avoid such payment for such service, or for any person for the purpose of avoiding payment, to conceal or to assist another to conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication, or for any person to assist another in avoiding payment for such service, either through the making of multiple applications for service at one (1) address, or otherwise."

complainants believe the offense was committed because Halo allegedly "misrepresented the traffic delivered" to the complainants. Halo is not, of course, at this point providing an answer and neither admits or denies any of the averments.

53. The TRA has absolutely no jurisdiction to hear cases alleging a violation of Chapter 65, Chapter 35 of the Tennessee Code. The Legislature clearly contemplated that the Tennessee courts – not this agency – would hear any claims. Even the complainants would not be so bold as to suggest that the TRA has any power to sit as a criminal tribunal and preside over the proceedings contemplated by TCA 65-35-105. That leaves only a possibility of the alternative civil damages authorized by TCA 65-35-104. That part of the statute, however, clearly also contemplates that an actual court – not an administrative agency – will handle the proceedings and decide if "actual, compensatory, incidental and punitive damages" are appropriate. This agency cannot award civil damages. That is inherently a judicial function, as is any action alleging "fraud" or "fraudulent intent." Further, the TRA does not have the power to award attorneys fees. Subsection (b) requires that there first have been a criminal case and that has not happened here. Subsections (c) and (d) each specifically require that the action be brought in court. TCA 65-35-107 expressly states that Chapter 35 does not expand the TRA's regulatory authority.

54. The TRA completely lacks subject matter jurisdiction over Count IV and this part of the complaint must be dismissed.

CONCLUSION

55. The jurisdiction of a tribunal is a threshold matter that must be determined at the outset of the proceeding.⁴¹ Even the Supreme Court of the United States must determine its own

⁴¹ See *id*; see also *Deselm v. Tennessee Peace Officers Standing and Training Comm'n*, 2010 WL 3959627 (Tenn. 2010).

jurisdiction before it can proceed with a matter, and the rule is the same in Tennessee.⁴² By filing this Motion, Halo asserts its objections to the TRA's assertion of either subject matter or personal jurisdiction over Halo and Halo's business and property as a threshold matter. This requires that the TRA investigate its jurisdiction prior to taking any substantive action in this matter. No hearing can be held "on the merits" unless and until the TRA has expressly found it does have subject matter jurisdiction over the action and personal jurisdiction over Halo. As demonstrated by the foregoing, however, the TRA does not have either subject matter jurisdiction or personal jurisdiction over Halo or Halo's business or property. Thus the TRA can take only one action: dismiss.

⁴² See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210 (1998).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Dismiss* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 5th day of August, 2011:

ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC., HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE 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.:

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W. Scott McCollough

EXHIBIT 1



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

FCC Registration Number (FRN): 0018359711

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

6

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 :

MOTION TO DISMISS

Transcom Enhanced Services, Inc. ("Transcom"), for the sole purpose of bringing to the attention of this tribunal that it completely lacks jurisdiction over the subject matter and over the person of Transcom, hereby provides its Motion to Dismiss. Transcom is not otherwise appearing, and is not in any manner submitting to or acknowledging this tribunal's jurisdiction or powers. As a result of this Motion, the Tennessee Regulatory Authority ("TRA") must suspend all consideration of the merits and any and all procedural orders pending its threshold decision on jurisdiction.

Nothing in this Motion to Dismiss is intended to address, and shall not be interpreted to address by way of admission or denial any of the complainants' factual contentions or contentions on the merits. The TRA cannot and should not reach any of these asserted facts or

contentions and cannot take up the substantive merits. No answer is or can be required. The TRA must find that its only allowed course of action is to dismiss for want of jurisdiction.

A. INTRODUCTION.

1. The complainants request the TRA issue an order "finding that Transcom has violated T.C.A. § 65-35-102(2)." Complaint ¶ 90-92. The complainants allege that they "believe that Transcom has caused or assisted Halo Wireless in misrepresenting the traffic delivered to them for the purpose and effect of engaging in tariff arbitrage and the avoidance of lawful and effective tariffed rates contained in the Rural Telephone Companies' intrastate access tariffs." Complaint ¶ 91. And, therefore, that "Transcom is in violation of T.C.A. § 65-35-102(2) by causing another to avoid lawful payment for service and/or concealing or assisting another to conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination for any telecommunication for the purpose of avoiding payment." Complaint ¶ 92. This request rests on the express propositions stated in ¶¶ 26-28 and 61-66, and the implicit claim that Transcom provides "intrastate" "telecommunications service." Even more specifically, the complaint alleges that Transcom is an "IXC" and provides "telephone toll," some of which is alleged to be intrastate.

2. Counts I (¶¶ 74-79) and III (¶¶ 80-86) assert that Halo owes access charges to the complainants for alleged "non CMRS" or "not non-access" traffic. Transcom is not referenced in those counts. Request for Relief 5, however, seeks an order requiring "Halo and/or Transcom" to pay all alleged outstanding intrastate access charges, along with interest and penalties. Request for Relief 5 in turn requests an order authorizing the complainants to block traffic from "Halo Wireless and Transcom" and ordering AT&T to "block" all traffic from "Halo Wireless and/or Transcom." Thus, the complainants are clearly asserting that Transcom occupies some kind of

as-yet-unknown relationship with regard to the petitioners that imposes financial obligations and duties, and that the TRA can sanction Transcom by ordering payment by Transcom, followed by blocking of any "Transcom" traffic if Transcom does not pay. The complaint does not provide any authority for the proposition that the TRA can require Transcom to post a bond, but even if there is such state authority it is preempted.

3. The complainants recognize that Transcom asserts it is an enhanced/information service provider under federal law. Complaint ¶¶ 61, 66; Exhibit A. They ultimately and effectively ask the TRA to take up the federal question, decide that Transcom is not an ESP and end user for access charge purposes, hold that Transcom instead provides telecommunications on a common carrier basis, decide that some or all of Transcom's traffic (and service) is a "telecommunications service" and more specifically is an intrastate telephone toll service, and then – apparently – rule that Transcom is in some fashion required to pay switched exchange access charges to the complainants.

4. Further, the "Request for Relief" asks that the TRA "issue an order requiring Halo Wireless and Transcom to issue a security bond in the amount of \$1,000,000 pending the outcome of the TRA decision in this proceeding."

5. The allegations, claims and requests for relief as against Transcom are purely and simply an attempted collateral and state-level attack on Transcom's *federal* regulatory classification. The complainants are necessarily asking the TRA to ignore express provisions in the Communications Act, and to act in the place of the FCC by finding that Transcom is not what it claims to be—i.e., an ESP as defined by the Communications Act and FCC rules—to the point that the TRA can impose state-level regulation and jurisdiction. The complainants then want the TRA to exercise such non-existent powers in a punitive and protective fashion.

6. The TRA, however, cannot entertain the complainants' plea for action. The TRA lacks jurisdiction over the subject matter and jurisdiction over Transcom's person, property and business. Only the FCC can resolve the threshold questions that could, possibly, then lead to the exercise of state-level jurisdiction and power. The complainants must take their complaint to the FCC, for the FCC has exclusive and primary original jurisdiction. The entire case must be dismissed.

B. TRANSCOM'S REGULATORY STATUS IS DETERMINED EXCLUSIVELY BY FEDERAL LAW AND THE TRA CANNOT ASSERT JURISDICTION OVER TRANSCOM UNTIL THE FCC EXPRESSLY HOLDS THAT (1) TRANSCOM IS NOT AN ESP AND (2) CAN BE REQUIRED BY A STATE COMMISSION TO OPERATE ON A COMMON CARRIER BASIS.

7. There are three related but distinct problems with any state-level attempt to assert jurisdiction over Transcom. First, on four separate occasions, federal bankruptcy courts of competent jurisdiction have ruled, based on federal laws and regulations, that Transcom is an enhanced service provider and is not subject to payment of access charges. ESP status is a federal, national status. The TRA cannot even begin to assert any power over Transcom unless and until a *federal* forum with competent jurisdiction finds, after hearing, that Transcom is not an ESP. Any attempt by the TRA to attack Transcom's ESP status would be an attack on the jurisdiction of those federal tribunals, and would be an effort to change Transcom's federal status by a state ruling. As will be shown below, the TRA cannot even reach the question in this case because it lacks both subject matter and personal jurisdiction over Transcom. Second, and more important, a forum with competent, federal jurisdiction would have to find—contrary to Transcom's prior, federal rulings—that Transcom provides "telecommunications" on a "common carrier" basis with the result that Transcom provides "telecommunications service." In other words, the forum would have to find that Transcom has held out as a common carrier or can be compelled to act as a common carrier with regard to the "telecommunications" Transcom

allegedly provides. Third, and finally, to be within the TRA's jurisdiction the "telecommunications service" would have to be jurisdictionally intrastate, despite the fact that Transcom's services have been ruled by federal tribunals to be jurisdictionally interstate. The TRA completely lacks jurisdiction to take up any of these federal questions.

8. ESPs were "created" by the FCC long ago, as part of what is known as the "Computer Inquiry" series of decisions.¹ They are purely creatures of federal law. ESPs are *not* common carriers. ESP services rely on and have a "telecommunications" component, but by definition do not *constitute* "telecommunications" or a "telecommunications service." As part of the 1996 amendments to the Communications Act, Congress essentially ratified the FCC's "basic/enhanced" dichotomy, albeit in different terms. "Enhanced service" is now "information service." But it is still *not* telecommunications service, it is still *not* common carrier and it is still not "telephone toll." More important, it is *not subject to state regulatory command at all*. States cannot implicitly or explicitly impose common carrier obligations on ESPs. States cannot require ESPs (which are end users for access charge purposes) to pay intrastate exchange access amounts based on a state's decision to overrule the FCC's finding that all ESP traffic is inseverably interstate. States most certainly cannot issue an order authorizing blocking of jurisdictionally interstate ESP traffic if the ESP does not pay the intrastate charges. States cannot require an ESP to pay a bond payable to some as-yet-unknown entity.

9. ESPs are not subject to state regulatory orders and are not amenable to suit or a state commission's regulatory command that they submit to state regulations in any capacity

¹ The case that started it all was Notice of Inquiry, *In re Regulatory & Policy Problems Presented by the Interdependence of Computer and Communication Services & Facilities*, 7 FCC 2d 11, ¶ 25 (1966). There have been too many decisions since then to list here. Some seminal ones, however, are: *In re Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Docket No. 20828 77 F.C.C.2d 384, ¶¶ 121 - 123 (rel. May 1980); *Computer and Communications Industry Association v. Federal Communications Commission*, 693 F.2d 198 (D.C. Cir. 1982); Report and Order, Amendment of Sections 64.702 of the Comm'n's Rules and Regs., 104 F.C.C.2d 958 (1986) ("*Computer III Report and Order*").

other than as an "end user" customer. No state can summon an entity claiming to be an ESP and require that it "prove" its exemption from regulation, after paying an interim bond. No state-certificated LEC can sue an ESP before a state commission, seek a declaration of "non-ESP" status and then try to force the ESP to "prove" it is an ESP to avoid state action. The TRA completely lacks personal jurisdiction over Transcom unless and until *the FCC* holds that Transcom is subject to the state's regulatory powers. Transcom does not voluntarily submit to the TRA's jurisdiction and has not sought the TRA's exercise of jurisdiction. Transcom will not appear in any capacity in this case other than by way of special appearance to contest jurisdiction.

10. Regulatory classification as an ESP *vel non* and the question whether Transcom does or can be compelled to hold out as a common carrier are based exclusively on *federal* law. Therefore, the question of whether Transcom is – or is not – an ESP, and whether Transcom is a common carrier or can be compelled to assume common carrier obligations (such as paying exchange access charges), can only be resolved by the FCC. The FCC has expressly refused to impose common carrier obligations on enhanced service providers.² No state has the right or

² See *In re Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Docket No. 20828, 77 F.C.C.2d 384, ¶¶ 121 - 123 (rel. May 1980) (emphasis added):

121. Because enhanced service was not explicitly contemplated in the Communications Act of 1934, there is no more a requirement to confront it with a specific traditional regulatory mechanism than there was, for example, in the case of cable television, which has formal elements of common carriage and broadcast television, or of specialized mobile radio services, which bears many formal similarities to radio common carriage. Precedent teaches that the Act is not so intractable as to require us to routinely bring new services within the provision of our Title II and III jurisdiction even though they may involve a component that is within our subject matter jurisdiction. In fact, in *GTE Service Corp. v. FCC*, 474 F.2d 724 (2nd Cir. 1973), the court substantially affirmed a Commission decision the underlying premise of which was that not all services involving the electronic transmission of information are communications services subject to regulation under Title II of the act.

122. Precedent teaches us, also, that all those who provide some form of transmission services are not necessarily common carriers. See, e.g., *AT&T v. FCC*, 572 F.2d 1725 (2d Cir. 1978) (sharing of communications services and facilities not common carriage and not subject to Title

power to decide the FCC was wrong. No state can overrule the FCC's express holding that ESPs are not, and cannot and should not be compelled to operate on a common carrier basis -- by anyone. No state can or should overrule four federal court decisions finding that Transcom is an ESP, *does not* provide telecommunications, *is not* a common carrier, and *is exempt from access charges*.

11. The FCC has preempted state commission authority over ESPs and ESP services, which necessarily means that a state commission cannot hale an ESP before the regulator and require the ESP to defend its ESP status. Under binding FCC rules and the Communications Act, enhanced/information services are by definition not "common carrier" services, nor are they

II); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) ("NARUC I") (SMRS); *American Civil Liberties Union v. FCC*, 523 F.2d 1344 (9th Cir. 1976) (CATV); *Philadelphia Television Broadcasting Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966). (FCC not required to treat cable television systems as common carriers nor to employ Title II regulatory tools.) Although the term itself is difficult to define with any precision, a distinguishing characteristic is the quasi public undertaking to "carry for all people indifferently." *NARUC I*, 525 F.2d at 641; *National Association of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608 (1976) ("NARUC II") citing *Seamon v. Royal Indemnity Co.*, 279 F.2d 737, 739 (5th Cir. 1960) and cases cited therein. While one may be a common carrier even though the nature of the service offered is of use to only a segment of the population, *NARUC I*, 525 F.2d at 641, "... a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal." *Id.* At the same time, we recognize certain inadequacies of any definition of common carriage which is dependent entirely on the intentions of a service provider. Instead, as the Court's opinion in *NARUC I* acknowledges, an element which must also be considered is any agency determination to impose a legal compulsion to serve indifferently. *NARUC I*, 525 F.2d at 642. We have specifically imposed no such obligation with respect to enhanced service providers.

123. Even this definition of common carriage cannot be readily applied to vendors of enhanced services. Inherent in the offering of enhanced services is the ability of service providers to custom tailor their offerings to the particularized needs of their individual customers. Thus, such services can vary from customer to customer as "individualized decisions" are made as to how best to accommodate the processing needs of their various subscribers. Admittedly, vendors of enhanced services also have the ability, if they so desire, to provide these services on an indiscriminate basis. Presumably, some do. But "this is not a sufficient basis for imposing the burdens that go with common carrier status." *NARUC I* at 644. We cannot conclude that under the common law providers of these services are common carriers or that Congress intended that these services be regulated under our Title II of the Act. Indeed, to subject enhanced services to a common carrier scheme of regulation because of the presence of an indiscriminate offering to the public would negate the dynamics of computer technology in this area. It would substantially affect not only the manner in which enhanced services are offered but also the ability of a vendor to more fully tailor the service to a given consumer's information processing needs.

"telecommunications" or a "telecommunications service." The FCC long ago decided that enhanced services should not be regulated by either the FCC under Title II of the Communications Act or by the states in any respect. The TRA completely lacks jurisdiction to take up the question of whether Transcom "should" or "can" be implicitly regulated as a common carrier IXC for intrastate purposes. Only the FCC can decide whether Transcom "is" or "is not" an ESP. Finally, ESPs' services are jurisdictionally interstate, and therefore there can not be any "intrastate" communications subject to intrastate switched exchange access charges in any event until the FCC says that is a legal possibility. The TRA completely lacks jurisdiction.

C. STATE REGULATORY AUTHORITIES HAVE NO JURISDICTION AND NO POWER TO CONSTRUE OR INTERPRET THE BOUNDARIES OF FEDERALLY ISSUED CERTIFICATES OR TO IMPOSE SANCTIONS FOR OPERATIONS CLAIMED TO NOT BE "AUTHORIZED" BY THE FEDERAL CERTIFICATE.

12. Transcom's operations may involve communication with end-points on the PSTN in Tennessee. These operations, however, are being conducted pursuant to federal law. Transcom does not have, is not required to have, cannot be compelled to seek or secure, and will not seek or secure, any state permissions to provide its services unless and until so ordered by a federal tribunal. The TRA completely lacks any jurisdiction and does not have the power to require Transcom to pay a bond, require Transcom to pay intrastate switched exchange access charges or in any way interfere with Transcom's federally-authorized activities.

13. If multiple state commissions took up these issues it is highly likely several of them would render inconsistent and conflicting rulings on Transcom's nationwide business operations and characterization under the Communications Act. There is a distinct possibility that one state may rule that Transcom can provide service in a certain fashion and under certain specific circumstances, while another state may hold that Transcom cannot provide service at all, or must operate under materially different rules. Some states may hold access applies, in whole

or in part, while others might rule no intrastate exchange access charges apply. The clear result would be a hodge-podge of potentially different and inconsistent regulatory requirements based on state-level interpretations of Transcom's federal authority to provide non-regulated enhanced/information services. There is one nationwide federal authorization, and therefore it cannot simultaneously mean several different and inconsistent things, nor can it possibly grant different rights or duties depending on separate and inconsistent rulings by state commissions. This tribunal lacks subject matter jurisdiction, and it has no personal jurisdiction over Transcom, or Transcom's business or property.

14. If any person – the complainants or this tribunal – have some reason to believe that Transcom is providing a service that is not “enhanced” or “information” as a matter of law the sole venue for presentation of that question is the FCC itself. If the complainants or the TRA believe that Transcom is subject to state-level regulation and orders, then the absolute first requirement is that the FCC say that is a legal possibility. The complainants cannot drag Transcom before a state-level tribunal for litigation over the scope of Transcom's federal regulatory status. No state commission has the jurisdiction to address this question or to interpret Transcom's federal regulatory status and then find some putative “exception” or “limitation” that is then used to subject Transcom to the kind of *quasi*-regulation the complainants ask the TRA to impose.

15. State regulatory authorities do not have and may not assume the power to interpret the boundaries of federally authorized activities or to impose state level regulation on operations assertedly not within the federal authorization. See *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79 (1959). The FCC is the exclusive “first decider” and must be the one to interpret, in the first instance, whether a particular activity falls within the federal

authorization to provide enhanced/information services. *Id.* at 177; *see also Gray Lines Tour, Co. v. Interstate Commerce Com.*, 824 F.2d 811, 815 (9th Cir. 1987)³ and *Middlewest Motor Freight Bureau v. ICC*, 867 F.2d 458, 459 (8th Cir. 1989).⁴ The complainants' *state commission* filing seeks extraordinary relief based on their interpretations of Transcom's *federal* authorizations. The entire matter is subject to the exclusive original jurisdiction of the FCC, and the state completely lacks jurisdiction.

16. This dispute is quite similar to the jurisdictional tussles over "private radio service" that raged from 1974 to 1989 and even thereafter. Congress preempted state-level entry and rate regulation over CMRS as part of the 1993 amendments. Before 1993, however, the FCC in 1974,⁵ and then Congress in 1982, pre-empted state-level regulation over private radio. Section 331(c)(3) as enacted in 1982 provided that "no State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service, except that

³ "State regulatory authorities may not assume the power to interpret the boundaries of federally issued certificates or to impose sanctions upon operations assertedly unauthorized by the federal certificate. *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79, 3 L. Ed. 2d 717, 79 S. Ct. 714 (1959). The [federal issuing agency] is entitled to interpret, in the first instance, certificates it has issued. *Service Storage*, 359 U.S. at 177."

⁴ "[I]nterpretations of federal certificates [which on their faces cover the operations] should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action."

⁵ *See e.g., National Assoc. of Regulatory Utility Comm'rs v. Federal Communications Com.*, 525 F.2d 630, 634-635 (D.C. Cir. 1976):

Second, 30 MHz (806-821 MHz and 851-866 MHz) is allocated to private services, to be licensed to operators in the Public Safety, Industrial and Land Transportation areas, as authorized under 47 C.F.R. §§ 89, 91, 93. Thus, under existing regulations, this allocation makes available additional spectrum for eligible applicants who wish to obtain a license to operate a station, either for their own private purposes, or, with several other eligibles, on a non-profit, cost-sharing basis. In addition, the Orders would create a new category of private mobile operators, eligible for licensing on the 30 MHz presently being allocated. This new category of operators, known as Specialized Mobile Radio Systems (SMRS), would operate on a commercial basis to provide service to third parties. Licensing is to be on a first-come, first-served basis, with SMRS applications treated no differently than those of other private applicants. Because it seeks to utilize a profit motive to speed development and refinement of mobile radio technologies, the Commission concludes that SMRS should not be subject to the common carrier regulations of Title II of the Communications Act, and that state certification of SMRS should be preempted.

nothing in this subsection may be construed to impair such jurisdiction with respect to common carrier stations in the mobile service." Even after the courts had repeatedly affirmed the FCC's prior preemption and Congress then ratified it,⁶ many Radio Common Carriers ("RCCs") did not like that they were subject to state-level regulation, but other entities could compete against them that were not subject to state-level regulation. Like the complainants in this case, these RCCs on occasion went to state commissions and tried to convince the state commission to "find" the private service providers were not "really" private service providers, and therefore, were subject to state regulation notwithstanding the preemption. Mississippi took a shot, and was brought to heel by the federal courts. *Motorola Communications & Electronics, Inc. v. Mississippi Public Service Com.*, 515 F. Supp. 793, 795-796 (S.D. Miss. 1979), *aff'd* *Motorola Communications v. Mississippi Public Service, Comm.*, 648 F.2d 1350 (5th Cir. 1981).⁷ Pennsylvania tried it, the FCC on three separate occasions held it could not do so, and Pennsylvania ultimately decided to give up the effort.⁸ Louisiana took up the cause and issued a "cease and desist order" to a provider. The FCC ruled that Louisiana's action was "without force and effect" and the provider was free "to continue to operate irrespective of any ruling to the contrary at the state level."⁹ In

⁶ See, e.g., *Telocator Network of America v. FCC*, 761 F.2d 763 (D.C. Cir. 1985) ("Millicom case").

⁷ "This Court, having considered the arguments of the parties, views the Mississippi Public Service Commission's application of Miss.Code § 77-3-3 (1972) to plaintiff Motorola as an illegal attempt to usurp jurisdiction to regulate communication activity that is preempted by the Federal Communications Commission. ... The FCC has exclusive jurisdiction to 'classify radio stations ... prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class ... encourage the larger and more efficient use of radio in the public interest ... (and) make such rules and regulations and prescribe such restrictions and conditions ... as may be necessary to carry out the provisions of this Act....' 47 U.S.C. § 303(a), (b), (g), (r) (1970)."

⁸ In the *Matter of Paul Kelley d/b/a American Teltronix*, 3 FCC Rcd 1091 (1988) (Delegated Authority); Memorandum Opinion and Order, *Paul Kelley d/b/a American Teltronix Licensee of Station WNHM552*, 3 FCC Rcd 5347 (1988) (On Review); *Second Memorandum Opinion and Order*, 5 FCC Rcd 1955 (1990) (On reconsideration); *Mobilfone of Northeastern Pennsylvania, Inc. v. Paul Kelley, d/b/a American Teltronix*, C-871182 and C-871578, 1989 Pa. PUC LEXIS 135, 70 Pa. PUC 302 (Penn PUC, 1989).

all of these instances, the allegation at the state commission was that the private service provider was acting outside of the federal authorization, or had violated that authorization, with the effect that the private service provider was no longer protected from state regulation. In each instance, the FCC or the courts squarely held that *only* the FCC could decide whether the state could act. In each instance the FCC or the courts held that the entity was not subject to common carrier regulation and no state could assert that it was a common carrier or subject to regulation as such, at the state level.

17. The situation is much the same with Transcom. ESPs are not subject to state-level regulation at either the state or federal level as a result of binding federal law. States have been preempted. No state has the power or jurisdiction to "interpret" the federal status in an ill-advised effort to find some "violation" or "exception" within the federal law that could then be used to assert state-level regulation. States purely and simply cannot act or assert jurisdiction unless and until the FCC says state action is permissible. The TRA completely lacks jurisdiction, and the best and only available course of action is to dismiss.

D. THE TRA'S JURISDICTION UNDER STATE LAW.

18. The TRA is a state regulatory agency organized pursuant to the laws of Tennessee.¹⁰ As a state agency, the TRA is wholly a creature of statute.¹¹ Its jurisdiction is

⁹ Declaratory Ruling, *In the Matter of Data Com, Inc.; and American Welding Supply, Inc., Licensee of Station KNBP-212 in the Business Radio Service*, FCC 86-315, 104 F.C.C.2d 1311 (rel. Jul. 1986).

¹⁰ See Tenn. Code Ann. § 65-4-104.

¹¹ See *Tennessee Pub. Serv. Comm'n v. S. Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977) (holding "[a]ny authority exercised by the Public Service Commission must be as the result of an express grant of authority by statute or arise by necessary implication from the expressed statutory grant of power"); see also *Tennessee Cable Television Ass'n v. Tennessee Pub. Serv. Comm'n*, 844 S.W.2d 151, 159 (Tenn. Ct. App. 1992) (affirming "the Commission's powers remain rooted in its enabling legislation, and so its actions must be harmonious and consistent with its statutory authority") (internal citations omitted); and *BellSouth Telecommunications, Inc. v. Greer*, 972 S.W.2d 663, 680 (Tenn. Ct. App. 1997) (affirming "it [The Commission] has no authority or power except that found in the statutes").

limited to the specific persons and issues identified in its enabling legislation.¹² Although the TRA's authority and jurisdiction can be modified by judicial interpretations of the enabling legislation, the TRA may not expand its jurisdiction unilaterally or address matters or parties beyond the jurisdiction afforded to it by its enabling legislation and judicial interpretations thereof.¹³

19. In other words, a TRA cannot adjudicate a dispute when it lacks statutory authority to support the assertion of jurisdiction over the specific persons who are involved in the dispute and over the specific subject matter raised by the dispute. Under Tennessee law, *in personam* jurisdiction over a party generally can be waived.¹⁴ In order for a party to avoid waiver of *in personam* jurisdiction, objections to the tribunal's assertion of such jurisdiction must be raised by the relevant party early enough in the case to allow the tribunal to rule on that issue prior to any substantive actions being taken.¹⁵ Once such an objection has been raised, the tribunal must determine the relevant jurisdictional facts and make a determination as to its jurisdiction before continuing with the proceeding.¹⁶ The scope of any tribunal's jurisdiction is

¹² See *Williams v. Am. Plan Corp.*, 216 Tenn. 435, 443, 392 S.W.2d 920, 924 (1965) (holding "it is the general rule that no intent may be imputed to the legislature in the enactment of a statute other than such as supported by the face of the statute within itself"); see also *Wayne County v. Tennessee Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 282 (Tenn. Ct. App. 1988) (holding the authority vested in any such administrative agency "must have its source in the language of the statutes themselves").

¹³ See *Tennessee Cable Television Ass'n.*, 844 S.W.2d at 163 (holding that the court "may vacate an agency's decision in a contested case when the agency's procedure violates statutory provisions or is otherwise unlawful"); see also Tenn. Code Ann. § 4-5-322(h)(1)-(h)(3).

¹⁴ *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (affirming that under Tennessee law, personal jurisdiction, unlike subject matter jurisdiction, may be waived).

¹⁵ *Id.* at 676 ("Waiver occurs only if there is no objection to personal jurisdiction in the first filing, either a Rule 12 motion or an answer.").

¹⁶ See *Brown v. Brown*, 198 Tenn. 600, 623 (Tenn. 1955) (recognizing well-established rule that jurisdiction over a party must be established before a tribunal can enter any ruling binding the party or the ruling is declared null and

governed first by the United States Constitution.¹⁷ However, a tribunal's jurisdiction may be further governed by state legislation and judicial interpretation.¹⁸

20. As noted above, in the context of a state agency, the scope of its jurisdiction is limited by the agency's enabling legislation.¹⁹ Thus, the state agency may assert *in personam* jurisdiction only over the specific classes of persons or entities that are identified by statute, as may be interpreted by the courts.²⁰ Because an agency's *in personam* jurisdiction is limited by statute, the mere fact that a person has routine contact with an agency is irrelevant to whether that person falls within the class prescribed by statute over which the agency can assert *in personam* jurisdiction.

21. Unlike *in personam* jurisdiction, subject matter jurisdiction cannot be waived by consent of the parties.²¹ Subject matter jurisdiction relates to the authority of the tribunal to address the particular issues raised by the dispute.²² Any party or the tribunal may raise the issue of subject matter jurisdiction at any time.²³ When subject matter jurisdiction is brought into

void).

¹⁷ U.S. CONST. amend. XIV, § 1.

¹⁸ See, e.g., *Deaderick Paging Co., Inc. v. Tennessee Pub. Serv. Comm'n*, 867 S.W.2d 729, 731 (Tenn. Ct. App. 1993) (stating "[T]he powers of the Commission must be found in the statutes. If they are not there, they are non-existent").

¹⁹ See note 27, *supra*.

²⁰ See *id.*

²¹ *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 1237 ("subject-matter jurisdiction, because it involves court's power to hear case, can never be forfeited or waived..."); *Meighan v. U.S. Sprint Comm'ns Co.*, 924 S.W.2d 632, 639 ("[s]ubject matter jurisdiction...cannot be waived...").

²² See *Landers*, 872 S.W.2d at 675.

²³ *Gillespie v. State*, 619 S.W.2d 128, 129 (Tenn. Ct. App. 1981) (stating that "under Rule 12.08, Tennessee Rules of Civil Procedure, the lack of subject matter jurisdiction may be raised at any time by the court or by the parties.").

question, the tribunal *must assure itself of its subject matter jurisdiction before it addresses any other matters in the proceeding*, and if the tribunal finds that it does not have subject matter jurisdiction, then the only authority possessed by the tribunal is that authority necessary to immediately dismiss the action.²⁴

22. The Tennessee legislature may have delegated jurisdiction and regulatory power over intrastate telecommunications services provided by common carriers. It did not, however, delegate jurisdiction and regulatory power over non-common carriers. The TRA does not have a shred of regulatory jurisdiction over end users that are not common carriers, and it most certainly has not been delegated any regulation or power over ESPs. Any assertion that Transcom is subject to the TRA's regulatory authority because Transcom *is not* an ESP and *is* an intrastate carrier could only be true if Transcom is not acting within and consistent with its *federal* authority to be a non-common carrier ESP, and to provide services that are not telecommunications and are not telecommunications service. The TRA lacks jurisdiction, power or authority to decide that question as shown above.

23. The TRA lacks subject matter jurisdiction. The TRA lacks personal jurisdiction over Transcom and over Transcom's business and property. The case must be dismissed.

²⁴ *Wilson v. Sentence Info. Services*, 2001 WL 422966 (Tenn. Ct. App. Apr. 26, 2001) (holding that "[w]hen a court lacks subject matter jurisdiction over the case, it must dismiss the case without reaching the merits of the complaint").

E. THE TRA DOES NOT HAVE JURISDICTION OVER ALLEGATIONS AN END USER VIOLATED TCA 65-35-102(2)

24. Count V (¶¶ 90-92) asserts that Transcom violated TCA 65-35-102(2).²⁵ The complainants appear to be accusing Transcom of "caus[ing] another to avoid payment" or "assist[ing] another to conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication." While the specifics of this allegedly fraudulent scheme the complainants complain about are not clear with regard to Transcom, it seems that the complainants believe the offense was done by somehow "misrepresenting the traffic delivered" to the complainants. Transcom is not, of course, at this point providing an answer and neither admits or denies any of the averments.

25. The TRA has absolutely no jurisdiction to hear cases alleging a violation of Chapter 65, Chapter 35 of the Tennessee Code. The Legislature clearly contemplated that the Tennessee courts – not this agency – would hear any claims. Even the complainants would not be so bold as to suggest that the TCA has any power to sit as a criminal tribunal and preside over the proceedings contemplated by TCA 65-35-105. That leaves only a possibility of the alternative civil damages authorized by TCA 65-35-104. That part of the statute, however, clearly also contemplates that an actual court – not an administrative agency – will handle the proceedings and decide if "actual, compensatory, incidental and punitive damages" are appropriate. This agency cannot award civil damages. That is inherently a judicial function, as is any action alleging "fraud" or "fraudulent intent." Further, the TRA does not have the power to

²⁵ The provision in issue provides that "it shall be unlawful for a person to ... (2) Obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefor, or for any person to cause another to avoid such payment for such service, or for any person for the purpose of avoiding payment, to conceal or to assist another to conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication, or for any person to assist another in avoiding payment for such service, either through the making of multiple applications for service at one (1) address, or otherwise."

award attorneys fees. Subsection (b) requires that there first have been a criminal case and that has not happened here. Subsections (c) and (d) each specifically require that the action be brought in court. TCA 65-35-107 expressly states that Chapter 35 does not expand the TRA's regulatory authority.

26. The TRA completely lacks subject matter jurisdiction over Count V and this part of the complaint must be dismissed.

CONCLUSION

27. The jurisdiction of a tribunal is a threshold matter that must be determined at the outset of the proceeding.²⁶ Even the Supreme Court of the United States must determine its own jurisdiction before it can proceed with a matter, and the rule is the same in Tennessee.²⁷ By filing this Motion, Transcom asserts its objections to the TRA's assertion of either subject matter or personal jurisdiction over Transcom and Transcom's business and property as a threshold matter. This requires that the TRA investigate its jurisdiction prior to taking any substantive action in this matter. No hearing can be held "on the merits" unless and until the TRA has expressly found it does have subject matter jurisdiction over the action and personal jurisdiction over Transcom. As demonstrated by the foregoing, however, the TRA does not have either subject matter jurisdiction or personal jurisdiction over Transcom or Transcom's business or property. Thus, the TRA can take only one action: dismiss.

²⁶ See *id.*; see also *Deselm v. Tennessee Peace Officers Standing and Training Comm'n*, 2010 WL 3959627 (Tenn. 2010).

²⁷ See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210 (1998).

Respectfully submitted,


W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion filed concurrently herewith

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Nashville, TN 37219

Direct: 615-850-8942

Fax: 615-244-6804

Attorneys for Transcom Enhanced Services, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Dismiss* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 5th day of August, 2011:

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC., HUMPHREYS
COUNTY TELEPHONE COMPANY, TELlico TELEPHONE 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.:**

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street
Suite 500
Harrisburg, PA 17108-9500



W. Scott McCollough

7

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RECEIVED

2011 AUG 10 11 31 AM

T.R.A. DOCKET ROOM

IN RE:
COMPLAINT OF
CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE
COMPANY, TELICO TELEPHONE
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, INC.,
TRANSCOM ENHANCED SERVICES, INC.
AND OTHER AFFILIATES FOR FAILURE
TO PAY TERMINATING INTRASTATE
ACCESS CHARGES FOR TRAFFIC AND
OTHER RELIEF AND AUTHORITY TO
CEASE TERMINATION OF TRAFFIC

DOCKET NO.: 11-00108

SUGGESTION OF BANKRUPTCY

Defendant Halo Wireless, Inc. ("Halo") hereby files its Suggestion of Bankruptcy as follows:

1. Notice is hereby given that on August 8, 2011, Halo filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Texas (Sherman Division). A copy of the Petition for Relief is attached hereto as Exhibit "A" and incorporated herein by reference for all purposes.
2. Pursuant to Section 362 of the Bankruptcy Code, the filing of the Petition operates as a stay of:
 - a. The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the Debtor that was or could have been

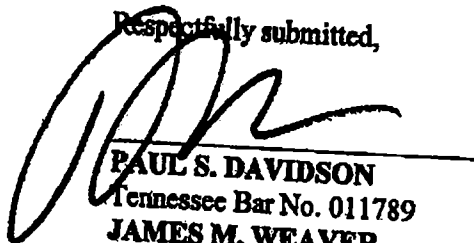
commenced before the commencement of the case under this Title, or to recover a claim against the Debtor that arose before the commencement of the case under this Title;

- b. The enforcement, against the Debtor or against property of the estate, of a judgment obtained before the commencement of the case under this Title;
- c. Any act to obtain possession of property of the estate or property from the estate;
- d. Any act to create, perfect, or enforce any lien against property of the estate;
- e. Any act to create, perfect, or enforce against property of the Debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this Title, except to the extent provided in section 362(b);
- f. Any act to collect assets, or recover a claim against the Debtor that arose before the commencement of the case under this title;
- g. The set off of any debt owing to the Debtor that arose before the commencement of the case under this Title against any claim against the Debtor; and
- h. The commencement or continuation of a proceeding before the United States Tax Court concerning the Debtor.

3. Pursuant to 11 U.S.C. § 362, the automatic stay is now in place. The complainants in the above referenced judicial proceeding seek declaratory and injunctive relief as well as monetary damages against both the Debtor and Transcom Enhanced Services, Inc. ("Transcom"). The complainants' claims against the Debtor and Transcom are inherently related and inextricably intertwined because all of the claims relate to the same traffic passing through both Transcom and Halo, and all of the claims allege concerted action, conspiracy, or other joint action by Transcom and Halo. In other words, all of the claims asserted seek the determination and adjudication of facts and liabilities against Halo. Accordingly, pursuant to the provisions of 11 U.S.C. § 362, the automatic stay prohibits further action against both the Debtor and Transcom in the instant proceeding.

Dated this 10th day of August, 2011.

Respectfully submitted,



PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

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Fax: 214.954.6850

Attorneys for Halo Wireless, Inc.

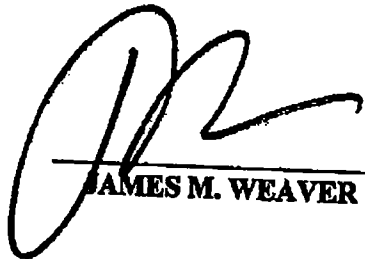
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Suggestion of Bankruptcy* was served via certified mail, return receipt requested, on the following counsel of record on this the 10th day of August, 2011:

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC., HUMPHREYS
COUNTY TELEPHONE COMPANY, TELlico TELEPHONE COMPANY, TENNESSEE
TELEPHONE COMPANY, CROCKETT TELEPHONE COMPANY, INC. PEOPLES
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212 Locust Street
Suite 500
Harrisburg, PA 17108-9500



JAMES M. WEAVER

Exhibit A

UNITED STATES BANKRUPTCY COURT
Eastern District of Texas

Name of Debtor (if individual, enter Last, First, Middle):
Halo Wireless, Inc.

Name of Joint Debtor (Spouse) (Last, First, Middle):

All Other Names used by the Debtor in the last 8 years
 (include married, maiden, and trade names):

All Other Names used by the Joint Debtor in the last 8 years
 (include married, maiden, and trade names):

Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN
 (if more than one, state all):
20-2287342

Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN
 (if more than one, state all):

Street Address of Debtor (No. and Street, City, and State):
**2351 West Northwest Highway, Suite 1204
 Dallas, TX**

Street Address of Joint Debtor (No. and Street, City, and State):

County of Residence or of the Principal Place of Business:

ZIP CODE 75220

County of Residence or of the Principal Place of Business:

ZIP CODE

Mailing Address of Debtor (if different from street address):

Mailing Address of Joint Debtor (if different from street address):

ZIP CODE

ZIP CODE

Location of Principal Assets of Business Debtor (if different from street address above):
1701 Commerce Street, Tyler, TX 75702

ZIP CODE

Type of Debtor
(Form of Organization)
(Check one box.)

- ☐ Individual (includes Joint Debtors)
See Exhibit D on page 2 of this form.
- ☒ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities,
 check this box and state type of entity below.)

Nature of Business
(Check one box.)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in
 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☒ Other

Tax-Exempt Entity
(Check box, if applicable.)

- ☐ Debtor is a tax-exempt organization
 under Title 26 of the United States
 Code (the Internal Revenue Code).

Chapter of Bankruptcy Code Under Which
the Petition is Filed (Check one box.)

- ☐ Chapter 7
- ☒ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for
 Recognition of a Foreign
 Main Proceeding
- ☐ Chapter 15 Petition for
 Recognition of a Foreign
 Nonmain Proceeding

Nature of Debts
(Check one box.)

- ☐ Debts are primarily consumer
 debts, defined in 11 U.S.C.
 § 101(8) as "incurred by an
 individual primarily for a
 personal, family, or house-
 hold purpose."
- ☒ Debts are primarily
 business debts.

Filing Fee (Check one box.)

- ☒ Full Filing Fee attached.
- ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach
 signed application for the court's consideration certifying that the debtor is
 unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must
 attach signed application for the court's consideration. See Official Form 3B.

Check one box:

- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☒ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:

- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to
 insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment
 on 4/01/13 and every three years thereafter).

Check all applicable boxes:

- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes
 of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

- ☒ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for
 distribution to unsecured creditors.

**THIS SPACE IS FOR
 COURT USE ONLY**

Estimated Number of Creditors

☐ 1-49 ☒ 50-99 ☐ 100-199 ☐ 200-999 ☐ 1,000-
 3,000 ☐ 5,001-
 10,000 ☐ 10,001-
 25,000 ☐ 25,001-
 50,000 ☐ 50,001-
 100,000 ☐ 100,001-
 Over
 100,000

Estimated Assets

☐ \$0 to
 \$50,000 ☐ \$50,001 to
 \$100,000 ☐ \$100,001 to
 \$500,000 ☐ \$500,001
 to \$1
 million ☒ \$1,000,001
 to \$10
 million ☐ \$10,000,001
 to \$50
 million ☐ \$50,000,001
 to \$100
 million ☐ \$100,000,001
 to \$500
 million ☐ \$500,000,001
 to \$1 billion ☐ More than
 \$1 billion

Estimated Liabilities

☐ \$0 to
 \$50,000 ☐ \$50,001 to
 \$100,000 ☐ \$100,001 to
 \$500,000 ☐ \$500,001
 to \$1
 million ☒ \$1,000,001
 to \$10
 million ☐ \$10,000,001
 to \$50
 million ☐ \$50,000,001
 to \$100
 million ☐ \$100,000,001
 to \$500
 million ☐ \$500,000,001
 to \$1 billion ☐ More than
 \$1 billion

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): Halo Wireless, Inc.	
<i>All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)</i>			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<i>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)</i>			
Name of Debtor:		Case Number:	Date Filed:
District: Eastern District of Texas		Relationship:	Judge:
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box.) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding (in a federal or state court) in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.) <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="text-align: center;"> _____ (Name of landlord that obtained judgment) </div> <div style="text-align: center;"> _____ (Address of landlord) </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).			

Voluntary Petition

Page 3

(This page must be completed and filed in every case.)

Name of Debtor(s):
H&O Wireless, Inc.

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of Attorney*

X

/s/ E. P. Keltner

Signature of Attorney for Debtor(s)

E. P. Keltner (11/18/700)

Printed Name of Attorney for Debtor(s)

Wright Ginsberg Bruslow P.C.

Firm Name

325 N. St. Paul Street, Suite 4150

Dallas, TX 75204

Address

(214) 651-8500

Telephone Number

08/08/2011

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

/s/ Russell Wiseman

Signature of Authorized Individual

Russell Wiseman

Printed Name of Authorized Individual

President

Title of Authorized Individual

08/08/2011

Date

Signatures

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X

(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 1103, and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(b) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of this maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Open New Bankruptcy Case (External)

United States Bankruptcy Court

Eastern District of Texas

Notice of Bankruptcy Case Filing

The following transaction was received from E. P. Keiffer entered on 8/8/2011 at 2:09 PM CDT and filed on 8/8/2011

Case Name: Halo Wireless, Inc.

Case Number: 11-42464

Document Number: 1

Docket Text:

Chapter 11 Voluntary Petition. Without Schedules, Statements and Other Required Documents. Filed by Halo Wireless, Inc. Document Due 08/15/2011. (Keiffer, E.)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: C:\fakepath\Voluntary Petition.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=995489823 [Date=8/8/2011] [FileNumber=11553079-0]
[c14e38f33b5338b5921774cff3f6c24fe73771d7cdd84465ed77155bad8212f287fd
2b70ab8df4dc37ade167868d62472e69c26e48a5bb9146b32ce03537d0bf]]

11-42464 Notice will be electronically mailed to:

E. P. Keiffer on behalf of Debtor Halo Wireless, Inc.
pkeiffer@wgblawfirm.com

US Trustee

USTPRegion06.TY.ECF@USDOJ.GOV

11-42464 Notice will not be electronically mailed to:

8

TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway
Nashville, TN 37243-0505
(615) 741-2904 Ext 136

FINAL CONFERENCE AGENDA

August 22, 2011 at 1:00p.m. through August 23, 2011 at 9:00a.m.

Issue Date: 8/12/2011 2:13:05 PM

Section 1 - Authority Business

- 1 10-00192 **City Tele Coin Company, Inc.**
CITY TELE COIN COMPANY, INC.'S NOTICE OF INTENT TO OPERATE
PURSUANT TO MARKET REGULATION
*Notice Of Intent
- 2 11-00125 **TDS Telecom**
APPLICATION OF TDS TELECOM SERVICE CORPORATION ON BEHALF OF
ITS WHOLLY OWNED SUBSIDIARIES, CONCORD TELEPHONE EXCHANGE,
INC. AND TENNESSEE TELEPHONE COMPANY FOR A STATE-ISSUED
CERTIFICATE OF FRANCHISE AUTHORITY
*Certificate Of Franchise Authority
- 3 **PRESENTATION ON STATUS OF CAST IRON AND BARE STEEL PIPE
REPLACEMENT**

Section 2 - Hill, Kyle and Roberson

- 1 11-00051 **Crexendo Business Solutions, Inc.**
PETITION OF CREXENDO BUSINESS SOLUTIONS, INC. FOR A CCN TO
PROVIDE COMPETING LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES IN TENNESSEE
*Hear And Consider Petition
- 2 11-00066 **Cartwright Creek, L.L.C.**
PETITION OF CARTWRIGHT CREEK, LLC TO APPROVE ALTERNATIVE
FORM OF FINANCIAL SECURITY UNDER RULE 1220-4-13-.07
*Consider Security And Status Of Compliance With TRA Rules

REQUEST FOR NAME CHANGE

- 11-00050 PETITION OF THE OTHER PHONE COMPANY, INC. D/B/A
ACCESS ONE COMMUNICATIONS TO CHANGE ITS NAME TO THE
OTHER PHONE COMPANY, INC D/B/A PAETEC BUSINESS
SERVICES
- 11-00061 PETITION FOR APPROVAL TO ADOPT ASSUMED BUSINESS NAME
BY DELTACOM, INC. D/B/A DELTACOM BUSINESS SOLUTIONS
- 11-00120 APPLICATION OF 3U TELECOM INC. TO CHANGE ITS NAME TO
TELECOM NORTH AMERICA INC.

Miscellaneous Business

Section 3 - Hill, Freeman and Kyle

- 1 11-00098 **United Telephone Company, Inc.**
JOINT APPLICATION OF UNITED TELEPHONE COMPANY, UTC LONG
DISTANCE, LLC AND UNITED COMMUNICATIONS HOLDINGS, LLC
REGARDING TRANSFER OF CONTROL OF UNITED TELEPHONE COMPANY
AND UTC LONG DISTANCE, LLC
*Consider Joint Application
- 2 11-00115 **BellSouth Telecommunications, Inc.**
AT&T TENNESSEE'S PETITION FOR EXPEDITED REVIEW OF CENTRAL
OFFICE CODE DENIAL
*Consider Petition
- 3 11-00124 **Tennessee Regulatory Authority**
AUDIT OF ATMOS ENERGY CORPORATION WEATHER NORMALIZATION
ADJUSTMENT FOR THE PERIOD NOVEMBER 1, 2010 TO APRIL 30,
2011
*Consider Staff Audit Report

CANCELLATION OF CERTIFICATION/NONPAYMENT OF FEES

10-00027 Payphone Manager, Inc.

Miscellaneous Business

Section 4 - Freeman, Kyle and Roberson

- 1 10-00145 **Aqua Green Utility Inc.**
PETITION OF AQUA GREEN UTILITY INC. TO AMEND ITS CCN AND
EXPAND ITS SERVICE AREA TO INCLUDE A PORTION OF JEFFERSON
COUNTY IN TENNESSEE, KNOW AS STONEBRIDGE ON DOUGLAS LAKE
*Hear And Consider Petition
- 2 10-00189 **Tennessee American Water Company**
PETITION OF TENNESSEE AMERICAN WATER COMPANY FOR A GENERAL
RATE INCREASE
*Consider Method Of Recovery Of Rate Case Expenses Of
Docket No. 08-00038
- 3 11-00108 **Concord Telephone Exchange, Inc.**
COMPLAINT OF CONCORD TELEPHONE EXCHANGE, INC., HUMPHREYS
COUNTY TELEPHONE CO., TELlico TELEPHONE 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
*Consider Convening A Contested Case Proceeding And
Appointing A Hearing Officer
- 4 11-00116 **Zayo Enterprise Networks, LLC**
APPLICATION OF ZAYO ENTERPRISE NETWORKS, LLC FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY
*Hear And Consider Petition
- 5 11-00122 **Atmos Energy Corporation**
PETITION OF ATMOS ENERGY CORPORATION FOR APPROVAL OF GAS
TRANSPORTATION AGREEMENT WITH U.S. NITROGEN, LLC
*Consider Convening A Contested Case Proceeding And
Appointing A Hearing Officer



CANCELLATION OF CERTIFICATION/NONPAYMENT OF FEES

07-00227 Sterling Payphones LLC

Miscellaneous Business

Section 5 - Hill, Freeman and Roberson

- 1 10-00113 **Cricket Communications**
PETITION OF CRICKET COMMUNICATIONS, INC. FOR ARBITRATION OF
RATES, TERMS AND CONDITIONS OF INTERCONNECTION WITH
BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T TENNESSEE
*Consider Joint Motion To Dismiss
- 2 11-00123 **Tennessee Regulatory Authority**
AUDIT OF CHATTANOOGA GAS COMPANY WEATHER NORMALIZATION
ADJUSTMENT FOR THE PERIOD NOVEMBER 1, 2010 TO APRIL 30,
2011
*Consider Staff Audit Report

INTERCONNECTION AND RESALE AGREEMENTS

- 11-00118 **Twin Lakes Telephone Cooperative Corporation**
PETITION FOR APPROVAL OF THE TRAFFIC EXCHANGE AGREEMENT
BETWEEN TWIN LAKES TELEPHONE COOPERATIVE CORPORATION AND
AENEAS COMMUNICATIONS LLC

CANCELLATION OF CERTIFICATION PER COMPANY REQUEST

- 90-05656 Community Market
95-02746 KeeSee Bonding Co.

Miscellaneous Business

9

TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway
Nashville, TN 37243-0505
(615) 741-2904 Ext 136

ADDENDUM TO FINAL CONFERENCE AGENDA
August 22, 2011 at 1:00p.m. through August 23, 2011 at 9:00a.m.

Issue Date: 8/15/2011 10:12:30 AM

Section 1 - Authority Business

1 DIRECTORS MEETING TO FOLLOW CONFERENCE

10

**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	:	

STEVEN H. THOMAS' MOTION FOR ADMISSION PRO HAC VICE

COMES NOW, Steven H. Thomas ("Thomas") and seeks admission *pro hac vice* to the Tennessee Regulatory Authority, pursuant to Tennessee Supreme Court Rule 19 and Tennessee Regulatory Authority Rule 1220-1-2-.04, to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. In accordance with Rule 19, the Affidavit of Steven H. Thomas is attached as **Exhibit A** and Thomas' Certificate of Good Standing from the United States District Court for the Northern District of Texas is attached as **Exhibit B**. Thomas' Certificate of Good Standing from the Supreme Court of Texas is attached as **Exhibit C**.

Respectfully submitted,



STEVEN H. THOMAS

Texas State Bar No. 49868890

pro hac vice motion pending

TROY P. MAJOUÉ

Texas State Bar No. 24067738

pro hac vice motion pending

JENNIFER M. LARSON

Texas State Bar No. 24071167

pro hac vice motion pending

**McGUIRE, CRADDOCK
& STROTHER, P.C.**

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion pending

MATTHEW A. HENRY

Texas State Bar No. 24059121

pro hac vice motion pending

MCCOLLOUGH|HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

PAUL S. DAVIDSON

Tennessee Bar No. 011789

CERTIFICATE OF SERVICE

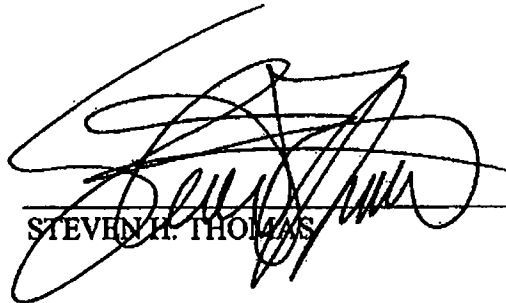
The undersigned hereby certifies that a true and correct copy of the foregoing *Motion for Admission Pro Hac Vice* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 15th day of August, 2011:

Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive
Suite 220
Brentwood, Tennessee 37027

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:**

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street
Suite 500
Harrisburg, PA 17108-9500


STEVEN H. THOMAS

**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 :

AFFIDAVIT OF STEVEN H. THOMAS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared STEVEN H. THOMAS, who, being by me first duly sworn, deposed upon his oath as follows:

1. “My name is Steven H. Thomas. I am an attorney licensed to practice law in Texas. I am over twenty-one (21) years of age, of sound mind and capable of making this Affidavit. I have never been convicted of a felony or crime involving moral turpitude. All matters stated herein are based upon my personal knowledge unless otherwise so stated.



2. My office address is McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, Texas 75201. I was licensed to practice law in the State of Texas on May 10, 1991, under bar number 19868890, and in the State of New York in 1990. I am admitted to practice in the United States District Court for the Northern District of Texas (1993), the United States District Court for the Eastern District of Texas (2007), the United States District Court for the Western District of Texas (1992), the United States District Court for the Southern District of Texas (1993), the United States District Court for the Southern District of New York (1998), and the United States Court of Appeals for the Second Circuit (1998), Fifth Circuit (1998), and Ninth Circuit (2010). I am a member in good standing in all jurisdictions in which I am licensed to practice law.

3. Through my Motion for Admission Pro Hac Vice (the "Motion"), I seek to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. in the above-referenced action before the Tennessee Regulatory Authority.

4. I have not sought admission in any trial or appellate court of Tennessee within the preceding three years. Further, I have not been denied *pro hac vice* admission or had an admission *pro hac vice* revoked by any court in any jurisdiction.

5. I have not been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee or by any similar lawyer disciplinary agency in any jurisdiction. Further, no disciplinary action or investigation concerning my conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee or before any similar lawyer disciplinary agency in any jurisdiction.

6. I am familiar with the Tennessee Rules of Professional Conduct and the rules governing proceedings before the Tennessee Regulatory Authority.

7. I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any manner arising out of my conduct in any proceeding and I agree to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

8. Paul S. Davidson and James M. Weaver, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615-850-8942, and Tennessee Bar Number 011789 (Davidson) and Tennessee Bar Number 013451 (Weaver) are associated in accordance with Tennessee Supreme Court Rule 19(g).

9. Per discussion with the Tennessee Regulatory Authority, no fees are required to be paid in connection with the Motion.

10. As stated in the Motion, I will serve the Motion and all exhibits upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee."

FURTHER AFFIANT SAYETH NOT.


STEVEN H. THOMAS

SUBSCRIBED and SWORN TO before me, on this, the 15th day of August, 2011.

[SEAL]




NOTARY PUBLIC in and for the
State of Texas

Commission Expires: 2-25-11

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

CERTIFICATE OF GOOD STANDING

I, Karen Mitchell, Clerk of the U.S. District Court for the Northern District of Texas, certify that the attorney named below is admitted to practice before this court and is currently in good standing:

Steven H. Thomas

Bar Number:

Date of Admission:

19868890

July 9, 1993

Witness my official signature and the seal of this court.

Dated: July 29, 2011

Karen Mitchell,
Clerk of Court

By: Penny Hunton
Deputy Clerk

Fee: \$15.00

EXHIBIT
B

The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I, **BLAKE HAWTHORNE**, Clerk of the Supreme Court of Texas, certify that the records of this office show that

Steven H. Thomas

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 10th day of May, 1991.

I further certify that the records of this office show that, as of this date

Steven H. Thomas

is presently enrolled with the State Bar of Texas as an active member in good standing.

IN TESTIMONY WHEREOF witness my hand
and the seal of the Supreme Court of
Texas at the City of Austin, this, the
4th day of August, 2011.

BLAKE HAWTHORNE, Clerk

by 

Blanca E. Valdez, Deputy Clerk

No. 080411B



11

**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 :

**JENNIFER M. LARSON'S AMENDED MOTION
FOR ADMISSION PRO HAC VICE**

COMES NOW, Jennifer M. Larson ("Larson") and seeks admission *pro hac vice* to the Tennessee Regulatory Authority, pursuant to Tennessee Supreme Court Rule 19 and Tennessee Regulatory Authority Rule 1220-1-2-.04, to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. In accordance with Rule 19, the Affidavit of Jennifer M. Larson is attached as **Exhibit A** and Larson's Certificate of Good Standing from the United States District Court for the Northern District of Texas is attached as **Exhibit B**. Larson's Certificate of Good Standing from the Supreme Court of Texas is attached as **Exhibit C**.

Respectfully submitted,



STEVEN H. THOMAS

Texas State Bar No. 19868890

pro hac vice motion pending

TROY P. MAJOUE

Texas State Bar No. 24067738

pro hac vice motion pending

JENNIFER M. LARSON

Texas State Bar No. 24071167

pro hac vice motion pending

McGUIRE, CRADDOCK

& STROTHER, P.C.

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion pending

MATTHEW A. HENRY

Texas State Bar No. 24059121

pro hac vice motion pending

MCCOLLOUGH|HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

WALLER LANSDEN DORTCH & DAVIS,

LLP

511 Union Street, Suite 2700

Nashville, TN 37219

Direct: 615-850-8942

Fax: 615-244-6804

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

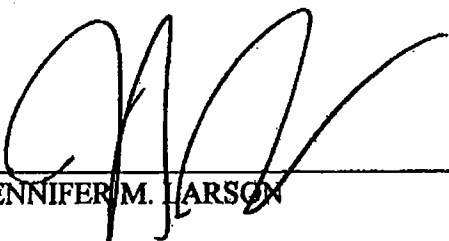
The undersigned hereby certifies that a true and correct copy of the foregoing *Amended Motion for Admission Pro Hac Vice* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 15th day of August, 2011:

Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive
Suite 220
Brentwood, Tennessee 37027

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:**

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street
Suite 500
Harrisburg, PA 17108-9500


JENNIFER M. LARSON

**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 :

AFFIDAVIT OF JENNIFER M. LARSON

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared JENNIFER M. LARSON, who, being by me first duly sworn, deposed upon his oath as follows:

1. “My name is Jennifer M. Larson. I am an attorney licensed to practice law in Texas. I am over twenty-one (21) years of age, of sound mind and capable of making this Affidavit. I have never been convicted of a felony or crime involving moral turpitude. All matters stated herein are based upon my personal knowledge unless otherwise so stated.



2. My office address is McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, Texas 75201. I was licensed to practice law in the State of Texas on November 7, 2010, under bar number 24071167. I am admitted to practice in the United States District Court for the Northern District of Texas (2010) and the United States District Court for the Eastern District of Texas (2011). I am a member in good standing in all jurisdictions in which I am licensed to practice law.

3. Through my Motion for Admission Pro Hac Vice (the "Motion"), I seek to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. in the above-referenced action before the Tennessee Regulatory Authority.

4. I have not sought admission in any trial or appellate court of Tennessee within the preceding three years. Further, I have not been denied *pro hac vice* admission or had an admission *pro hac vice* revoked by any court in any jurisdiction.

5. I have not been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee or by any similar lawyer disciplinary agency in any jurisdiction. Further, no disciplinary action or investigation concerning my conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee or before any similar lawyer disciplinary agency in any jurisdiction.

6. I am familiar with the Tennessee Rules of Professional Conduct and the rules governing proceedings before the Tennessee Regulatory Authority.

7. I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any manner arising out of my conduct in any proceeding and I agree to be bound by the Tennessee Rules of

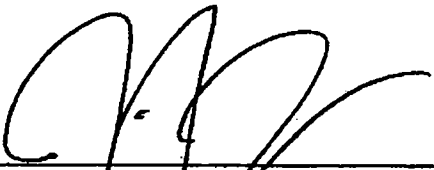
Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

8. Paul S. Davidson and James M. Weaver, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615-850-8942, and Tennessee Bar Number 011789 (Davidson) and Tennessee Bar Number 013451 (Weaver) are associated in accordance with Tennessee Supreme Court Rule 19(g).

9. Per discussion with the Tennessee Regulatory Authority, no fees are required to be paid in connection with the Motion.

10. As stated in the Motion, I will serve the Motion and all exhibits upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee."

FURTHER AFFIANT SAYETH NOT.



JENNIFER M. LARSON

SUBSCRIBED and SWORN TO before me, on this, the 15th day of August, 2011.

[SEAL]





NOTARY PUBLIC in and for the
State of Texas

Commission Expires: 2-25-11

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

CERTIFICATE OF GOOD STANDING

I, Karen Mitchell, Clerk of the U.S. District Court for the Northern District of Texas, certify that the attorney named below is admitted to practice before this court and is currently in good standing:

Jennifer M. Larson

Bar Number:

Date of Admission:

24071167

December 6, 2010

Witness my official signature and the seal of this court.

Dated: July 29, 2011

Karen Mitchell,
Clerk of Court

By: Penny Hunton
Deputy Clerk

Fee: \$15.00

The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I, **BLAKE HAWTHORNE**, Clerk of the Supreme Court of Texas, certify that the records of this office show that

Jennifer Michelle Larson

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 5th day of November, 2010.

I further certify that the records of this office show that, as of this date

Jennifer Michelle Larson

is presently enrolled with the State Bar of Texas as an active member in good standing.

IN TESTIMONY WHEREOF witness my hand

and the seal of the Supreme Court of Texas at the City of Austin, this, the 4th day of August, 2011.

BLAKE HAWTHORNE, Clerk

by *Blanca E. Valdez*

Blanca E. Valdez, Deputy Clerk

No. 080411A



12

**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 :

TROY P. MAJOUÉ'S AMENDED MOTION FOR ADMISSION PRO HAC VICE

COMES NOW, Troy P. Majoue ("Majoue") and seeks admission *pro hac vice* to the Tennessee Regulatory Authority, pursuant to Tennessee Supreme Court Rule 19 and Tennessee Regulatory Authority Rule 1220-1-2-.04, to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. In accordance with Rule 19, the Affidavit of Troy P. Majoue is attached as Exhibit A and Majoue's Certificate of Good Standing from the United States District Court for the Northern District of Texas is attached as Exhibit B. Majoue's Certificate of Good Standing from the Supreme Court of Texas is attached as Exhibit C.

Respectfully submitted,



STEVEN H. THOMAS

Texas State Bar No. 19868890

pro hac vice motion pending

TROY P. MAJOUÉ

Texas State Bar No. 24067738

pro hac vice motion pending

JENNIFER M. LARSON

Texas State Bar No. 24071167

pro hac vice motion pending

**McGUIRE, CRADDOCK
& STROTHER, P.C.**

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

pro hac vice motion pending

MATTHEW A. HENRY

Texas State Bar No. 24059121

pro hac vice motion pending

MCCOLLOUGH|HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

Tennessee Bar No. 013451

**WALLER LANSDEN DORTCH & DAVIS,
LLP**

511 Union Street, Suite 2700

Nashville, TN 37219

Direct: 615-850-8942

Fax: 615-244-6804

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Amended Motion for Admission Pro Hac Vice* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 15th day of August, 2011:

Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee
10 Cadillac Drive
Suite 220
Brentwood, Tennessee 37027

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
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.:**

H. LaDon Baltimore
FARRAR & BATES
211 7th Ave., N.
Suite 500
Nashville, TN 37219

Norman J. Kennard
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street
Suite 500
Harrisburg, PA 17108-9500



TROY P. MAJOUÉ

**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 :
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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 :

AFFIDAVIT OF TROY P. MAJOUÉ

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared TROY P. MAJOUÉ, who, being by me first duly sworn, deposed upon his oath as follows:

1. “My name is Troy P. Majoue. I am an attorney licensed to practice law in Texas. I am over twenty-one (21) years of age, of sound mind and capable of making this Affidavit. I have never been convicted of a felony or crime involving moral turpitude. All matters stated herein are based upon my personal knowledge unless otherwise so stated.



2. My office address is McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, Texas 75201. I was licensed to practice law in the State of Texas in May of 2009, under bar number 24067738, in the State of Louisiana in October of 2005, under the bar number 29963, and in the State of Alabama in May of 2006, under bar number AB-1365-Y88M. I am admitted to practice in the United States District Court for the Northern District of Texas (2009), the United States District Court for the Eastern District of Texas (2009), the United States District Court for the Western District of Texas (1992), the United States District Court for the Southern District of Texas (2009), the United States District Court for the Eastern District of Louisiana (2006), the United States District Court for the Western District of Louisiana (2006), the Middle District of Louisiana (2006), and the United States Court of Appeals for the Fifth Circuit (2006). I am a member in good standing in all jurisdictions in which I am licensed to practice law.

3. Through my Motion for Admission Pro Hac Vice (the "Motion"), I seek to represent both Halo Wireless, Inc. and Transcom Enhanced Services, Inc. in the above-referenced action before the Tennessee Regulatory Authority.

4. I have not sought admission in any trial or appellate court of Tennessee within the preceding three years. Further, I have not been denied *pro hac vice* admission or had an admission *pro hac vice* revoked by any court in any jurisdiction.

5. I have not been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee or by any similar lawyer disciplinary agency in any jurisdiction. Further, no disciplinary action or investigation concerning my conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee or before any similar lawyer disciplinary agency in any jurisdiction.

6. I am familiar with the Tennessee Rules of Professional Conduct and the rules governing proceedings before the Tennessee Regulatory Authority.

7. I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any manner arising out of my conduct in any proceeding and I agree to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

8. Paul S. Davidson and James M. Weaver, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615-850-8942, and Tennessee Bar Number 011789 (Davidson) and Tennessee Bar Number 013451 (Weaver) are associated in accordance with Tennessee Supreme Court Rule 19(g).9. Per discussion with the Tennessee Regulatory Authority, no fees are required to be paid in connection with the Motion.

10. As stated in the Motion, I will serve the Motion and all exhibits upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee."

FURTHER AFFIANT SAYETH NOT.

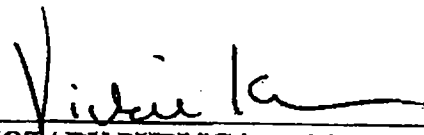


TROY P. MAJOUÉ

SUBSCRIBED and SWORN TO before me, on this, the 15th day of August, 2011.

[SEAL]





NOTARY PUBLIC in and for the
State of Texas

Commission Expires: 2-25-2013

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

CERTIFICATE OF GOOD STANDING

I, Karen Mitchell, Clerk of the U.S. District Court for the Northern District of Texas, certify that the attorney named below is admitted to practice before this court and is currently in good standing:

Troy P. Majoue

Bar Number:

24067738

Date of Admission:

January 23, 2009

Witness my official signature and the seal of this court.

Dated: July 29, 2011

Karen Mitchell,
Clerk of Court

By: Penny Hunton
Deputy Clerk

Fee: \$15.00



The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I, **BLAKE HAWTHORNE**, Clerk of the Supreme Court of Texas, certify that the records of this office show that

Troy Preston Majoue

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 1st day of May, 2009.

I further certify that the records of this office show that, as of this date

Troy Preston Majoue

is presently enrolled with the State Bar of Texas as an active member in good standing.

IN TESTIMONY WHEREOF witness my hand
and the seal of the Supreme Court of
Texas at the City of Austin, this, the
4th day of August, 2011.

BLAKE HAWTHORNE, Clerk

by *Blanca E. Valdez*

Blanca E. Valdez, Deputy Clerk

No. 080411C



13

J. Russell Farrar
William N. Bates
Kristin Ellis Berexa
Teresa Reall Ricks
Mary Byrd Ferrara*
Robyn Beale Williams
Jennifer Orr Locklin
Keith F. Blue
Heather C. Stewart
Deanna Lee Fankhauser
Beth L. Frazer
Brandt M. McMillan
Rachel Morrison Casias**
Aaron E. Winter
John C. Lyell

LAW OFFICES
**Farrar
&
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fblaw@farrar-bates.com

Of Counsel
H. LaDon Baltimore
Kim G. Adkins

* Also licensed in KY
** Also licensed in NM

filed electronically in docket office on 08/16/11

August 11, 2011

Hon. Eddie Roberson, Chairman
Tennessee Regulatory Authority
c/o Sharla Dillon, Docket & Records Manager
460 James Robertson Parkway
Nashville, TN 37243

RE: Complaint of TDS Telecom, et. al. v. Halo Wireless, Inc., et. al.
Docket No. 11-00108

Dear Chairman Roberson:

Attached for filing is a response to Transcom's Motion to Dismiss.

The co-defendant, Halo Wireless, Inc. ("Halo"), has filed for bankruptcy, but co-defendant Transcom Enhanced Services, Inc. ("Transcom"), has not filed for bankruptcy. While the automatic stay under the Bankruptcy Code applies to Halo, the automatic stay does not apply to Transcom which did not file bankruptcy.

Complainants vigorously dispute Halo's assertion in its *Suggestion of Bankruptcy* filed in this docket that the automatic stay also applies to the co-defendant, Transcom Enhanced Services, Inc. ("Transcom"), a non-party to Halo's bankruptcy.

This argument of Halo's (that the stay applies to a non-debtor) was rejected by the Georgia Public Service Commission ("GPSC") on August 8, 2011 in Docket No. 342149.

In the GPSC proceeding, TDS Telecom also filed a complaint against Halo and Transcom. In such GPSC docket, the GPSC held in abeyance the proceeding against Halo because of the stay, but allowed the proceeding against Transcom to continue. The Tennessee Regulatory Authority should also do the same in this docket: hold in abeyance action against Halo, but continue action against Transcom.

Sincerely,



H. LaDon Baltimore
Norman J. Kennard
Attorneys for Petitioners

cc: Paul S. Davidson
James M. Weaver
W. Scott McCollough
Steven H. Thomas
Troy P. Majoue
Jennifer M. Larson

**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	:	

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS FILED BY TRANSCOM
ENHANCED SERVICES, INC.**

COMES NOW, Complainants, Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company and Tennessee Telephone Company; Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc.; Highland Telephone Cooperative, Inc.; and North Central Telephone Coop., Inc. (all collectively referred to as the "Rural Telephone Companies" or the "RLECs") in the above-styled docket, and file this Response in Opposition to the Motion to Dismiss filed by Respondent, Transcom Enhanced Services, Inc. ("Transcom"). On August 5, 2011, Transcom filed its Motion to Dismiss, contending that the Tennessee Regulatory Authority ("the TRA" or "the Authority") lacks jurisdiction to resolve the allegations asserted against it in the Complaint filed by Complainants in the above styled docket. In its Motion to Dismiss, Transcom only

makes conclusory statements as to the nature of its business, the nature of the calling traffic at issue and this Authority's jurisdiction over the claims contained in the Complaint. However, the issues raised by Complainants fall squarely within the TRA's jurisdiction, and the Motion to Dismiss must be denied.

A. INTRODUCTION

The RLECs' Complaint, on its face, raises issues that fall squarely within the jurisdiction of the Authority; namely Transcom's delivery of intrastate toll traffic to Complainants and its non-payment of tariffed intrastate access rates. These issues also include the absence of state authority for Transcom to act as carrier of intrastate toll traffic.

The Complainants provide both local exchange and intrastate exchange access service pursuant to the Authority's existing policies, rules, regulations and tariffs (Complaint at ¶¶ 1-15).

The Complaint, which also names Halo Wireless, Inc. ("Halo")¹ as a defendant, avers that Transcom is operating as an interexchange carrier (IXC) to deliver intrastate toll calls as part of its core "voice termination" service provided to other carriers under a scheme to avoid the payment of access charges (Complaint at ¶¶ 25, 26, 61, 66). Complainants, therefore, have made a *prima facie* showing of intrastate jurisdiction. Therefore, the Complaint should not be dismissed, and the Authority should proceed with its scheduled hearing thereon.

In its Motion to Dismiss, Transcom argues that Transcom's *putative status* as an ESP also precludes the payment of access charges. The Complainants dispute this defense. Complainants' traffic studies show that Transcom is *not* the originating carrier *on any* of the calls. The traffic delivered consists of traditional toll calling originated not by Transcom, but rather on other carriers' networks. Transcom is simply operating as a wholesale deliverer of intrastate toll traffic

¹ Halo has filed bankruptcy and thus an automatic stay prohibits Complainants from pursuing their action against Halo, including a response to Halo's Motion to Dismiss.

and is an interexchange carriers. Complainants will present testimony detailing the conduct and conclusions of these studies. The Complainants are also prepared to offer additional evidence regarding the operations and services of Transcom, which also refute its jurisdictional defense. The Complainants will demonstrate that Transcom is acting as a common carrier in the delivery of intrastate toll traffic and are acting as an interexchange carrier, but is not certificated to do so.

The matter should be heard by the Authority. Transcom seeks to raise issues of jurisdiction in the abstract. Yet, jurisdiction is a fact-based inquiry, and Transcom can not possibly win a jurisdictional argument without revealing the facts of its operation, facts which it claims are critical to the resolution of RLECs' Complaint. Transcom claims "ESP" status *without any* underlying description whatsoever of why it asserts this to be true or what it is doing to deserve this label. By uttering a few apparently magic regulatory words, with no need to support their applicability, Transcom expects to be able to continue to use Complainants' network for free.

Transcom blatantly asks the Authority to accept the representations at face value and as dispositive of the jurisdictional issues. As to Transcom, there is no such thing as an ESP certificate, and Transcom explains nothing to show that what it does meets the very specific and limited definition of an ESP (including being an end-user, which it is obviously not).

The Complainants' testimony will demonstrate that Transcom, by its own admission, provides "voice termination services" to other interexchange carriers, moving one *billion* minutes a month to terminating carriers. From its position of transporting traffic in the middle of a call, Transcom has no opportunity to offer enhanced services. Simply stated, Transcom is engaging in the delivery of toll traffic on behalf of a multitude of other carriers. While it

attempts to ascribe different labels to what it does, these do not fit the circumstances, and its unsupported claims to the contrary are transparently false.

Despite filing rebuttal testimony on the jurisdictional issue, Transcom offers no explanation other than to restate the same conclusory statements they chose to disclose in correspondence and pleadings. As explained in this Response, the failure of Transcom to support its affirmative defense of preemption through the Authority's fact finding process is a critical tactical error on their part. The Authority is fully empowered to hear this case and resolve the jurisdictional claims.

Moreover, the Transcom Motion misrepresents the law and fails to disclose the legal precedent that applies to defining ESP services and how that issue relates to intercarrier compensation and state jurisdiction. This label is inapplicable to it. Transcom's claim to be an ESP is patently absurd.

B. TRANSCOM'S CLAIMS DO NOT PRECLUDE ALL INQUIRY OR FORCLOSE ANY STATE JURISDICTION

1. Cases cited by Transcom are not relevant.

The instant complaint case is not at all like "the jurisdictional tussles over 'private radio service'" raised by Transcom in its (Motion, pp. 10-12, ¶ 16). None of the private radio service cases cited by Transcom has any application or relevance to the disposition of the instant matter, and Transcom's recitation of those cases represents nothing more than an attempt to obfuscate the jurisdictional issue. Those cases pertain to the regulation of radio carriers engaged in private land mobile service and in no way address or influence the issues raised by the instant complaint, which, as discussed *infra* in more detail, are clearly and rightfully within the jurisdiction of the Authority to address.

2. A State Authority may inquire in the facts surrounding a jurisdictional defense

Preemption does not occur because "I said so." If Transcom claims that the facts of its operation are such that it is removed from state regulation, it is required to demonstrate the facts to allow this Authority to make that determination. In appeals lodged by Global NAPs against state Authorities that applied intrastate access rates to ISP-bound traffic, federal courts consistently affirmed the states' right to investigate and to require a demonstration of preempted status:

Global NAPS' argument ignores an important distinction. The FCC has consistently maintained a distinction between local and "interexchange" calling and the intercarrier compensation regimes that apply to them, and reaffirmed that states have authority over intrastate access charge regimes. Against the FCC's policy of recognizing such a distinction, a clearer showing is required that the FCC preempted state regulation of both access charges and reciprocal compensation for ISP-bound traffic.²

This view was also adopted by the Second Circuit Court of Appeals, again in a case ruling against Global NAPs' preemption theory.³ The lesson of the FCC's ISP-Bound Orders is that it is a mistake to acquiesce this Authority's state authority and rules to spurious arguments that the FCC has impliedly preempted state compensation and now require the provisioning of free services.

Hearing Officer found that Global NAPs bore the burden of proof with respect to establishing the nature of its traffic and that it was, in fact, enhanced.⁵ The Hearing Officer stated that the fundamental question was the character and classification of the traffic, and since Global NAPs controlled the evidence necessary to substantiate their claim, the burden was on Global NAPs to present such evidence.⁶ The Georgia Commission fully agreed that preemption is an affirmative defense⁷ and that the party pleading the defense has the burden of proof:

Courts have found that the party raising the affirmative defense has the burden of proof. *Buist v. Time Domain Corporation*, 926 So. 2d 290, 296 (2005). Under this principle, GNAPs had the burden of proof to demonstrate the subject traffic was of such a nature as to preempt the Authority.⁸

Other states have ruled similarly on the issue of presenting the facts necessary to a preemption claim.⁹

⁵ *Id.*, Initial Decision filed April 8, 2008 ("*Global NAPs Initial Decision*") (citing O.G.C.A. § 24-4-1; *Fulton-DeKalb Hospital Authority v. Fanning*, 196 Ga.App. 556, 558, 396 S.E.2d 534, 535 (1990); *Pembroke Mgmt. v. Cassaboon*, 157 Ga.App. 675, 278 S.E.2d 100 (1981); and *Parsons v. Harrison*, 133 Ga.App. 280, 211 S.E.2d 128 (1974)).

⁶ See *Global NAPs Initial Decision* at 2.

⁷ *Global NAPs Docket*, Order Adopting in Part and Denying in Part the Hearing Officer's Initial Decision filed July 31, 2009 ("*Global NAPs Order*"), at 12 ("The Independent Companies alleged that they received traffic from GNAPs for termination, and asked that the Commission declare that they are entitled to access charges in connection with such traffic. GNAPs raised the affirmative defense of preemption in an effort to avoid making such payment.").

⁸ *Id.* at 12; see also *id.* at 7 ("As will be addressed in more detail in Staff's recommendation on GNAPs's alleged error number 9, the Initial Decision properly determined that the burden of proof was on GNAPs to demonstrate that the Commission is preempted with regard to the subject traffic. See *Fifth Third Bank ex rel. Trust Officer v. CSX Corp.*, 415 F.3d 741, 745 (7th Cir. 2005)."); *id.* at 10 ("... preemption is an affirmative defense and the party raising it bears the burden of proof.").

⁹ The Florida PSC ruled that PointOne, a carrier similar to Transcom, does not enhance long distance traffic and that "Sprint should not have to track down carriers of traffic that has been handed off several times before ultimately reaching Sprint's network." *Complaint Against KMC Telecom*, Florida PSC Docket No. 041144-TP, Order No. PSC-05-1234-FOF-TP issued December 19, 2005. The Pennsylvania PUC also ruled that Global NAPs bore the burden to demonstrate its affirmative preemption defenses. *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, PA PUC Docket C-2009-2093336, Opinion and Order entered March 16, 2010 ("*Palmerton v. Global NAPs*").

In the *Global NAPs Docket*, the Georgia Hearing Officer further found the burden is to "clearly" show preemption:

As a matter of law, GNAFs must show that the preemption it claims exists must be clear. *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 at 73, citing *Hillsborough County v. Automated Med. Labs, Inc.* 471 U.S. 707 (1985) ("*Hillsborough County*"). Moreover, since the Authority has engaged in the regulation of intrastate access arrangements for almost the last 16 years, the United States Supreme Court has stated that, "[w]here ... the field that Congress is said to have pre-empted has been traditionally occupied by the States 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Hillsborough County*, 471 U.S. at 715, citing *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).¹⁰

This too was affirmed by the full Georgia Commission:

It is well-established that there cannot be a finding that the historic police powers of the state are preempted, unless it is the clear and manifest purpose of Congress. *Altria Group, Inc. v. Good*, 129 S. Ct. 538, 543 (2008).¹¹

As with the Georgia Global NAPs proceeding, the Authority can and should hear the facts regarding the operations of Transcom, first to determine jurisdiction and then, if not preempted, to apply the appropriate remedy. There is no reason these two inquiries can not occur concurrently, and judicial economy warrants it. Transcom does not want any fact hearings and, thus far, has done everything to prevent any inquiry that would allow the facts to be developed. It prefers, instead, to raise and argue jurisdictional issues based upon its own unsworn and untested conclusions. There is simply no reason that the Authority should be forced to accept the mere contentions stated in the Transcom Motion as proven fact.

B. TRANSCOM'S CLAIM TO BE AN ESP IS UNPROVEN AND IRRELEVANT

¹⁰ *Global NAPs Initial Decision* at 10

¹¹ *Global NAPs Order* at 9.

Transcom claims ESP status and, then, argues federal preemption from that conclusory self-judgment (Motion, p. 4, ¶ 7). Transcom claims that Transcom is an ESP with not one shred of factual support or any acknowledgement that this too is a carefully crafted definition into which Transcom must demonstrate that it fits.

Complainants maintain that Transcom is not an ESP. While Complainants admit that Transcom *claims* to be an Enhanced Service Provider (Motion, p. 4, ¶ 7), they dispute this claim. They question whether Transcom is an ESP and how an entity can be an ESP that offers no enhanced services to end use customers, but which instead offers "voice termination" services to other interexchange carriers.

Complainants do not seek to turn Transcom into a common carrier (Motion, p. 3, ¶ 3). It is one. Transcom is operating as a common carrier right now in its delivery of "voice termination" toll traffic destined for carriers like Complainants.

While admitting that its "operations *may* involve communication with end-points on the PSTN in Tennessee," Transcom continues on to claim that "[t]hese operations, however, are being conducted pursuant to federal law (Motion, p. 8, ¶ 12)." Specifically, Transcom asserts that it has "federal authority" to be an ESP, which specifically excludes state regulation (Motion, pp. 9-10, ¶ 15). This is, of course, complete fiction. There is no "ESP license." There is no deference owed to Transcom's claim to be one.

Transcom does not explain how Transcom comes even close to being an ESP. Transcom claims that all of the long distance traffic delivered to Complainants is "enhanced" and, therefore, is exempt from terminating access charges. According to this argument, the voice traffic originated by ILEC, CLEC, Cable, Wireless and other companies that otherwise pay terminating access is excused when it is laundered and delivered through Transcom. There is no

such thing as "ESP-in-the middle." Nor can Transcom point to any precedent for one. The whole arrangement is absurd and unsupportable both factually and legally.

The ESP exemption is very specific. Under FCC case law dating back to the AT&T divestiture, *customers of telecommunications services* offering dial-up data services, such as WestLaw and Compuserve, were granted "the option of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by [interexchange, long distance carriers]."¹² A current example is dial-up traffic received by an internet service provider and destined for the Internet (*i.e.*, ISP-bound traffic). The ISP receives telecommunication service from a local carrier and then uses the call to access the Internet. As noted by the FCC, "information service providers have used this exemption to their advantage by choosing to pay local business rates, rather than the tariffed interstate access charges that other users of interstate access are required to pay."¹³ Transcom is not subscribing, as an end-user, to Complainants' local services. Obviously a huge volume, wholesale toll carrier, Transcom has no need to buy local service.

Another basic flaw in the Transcom attempt to apply this customer exemption to Transcom is that *the ESP exemption applies only to calls coming into the ESP and not out-bound traffic*, as we have in this case. Here, Transcom delivers voice traffic to Complainants.

¹² *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988) ("ESP Exemption Order"). "Thus, ISPs generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices." *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (Declaratory Ruling and Notice of Proposed Rulemaking released February 26, 1999) ("ISP Declaratory Ruling") at ¶ 5. The ESP exemption means that the ESP itself can obtain standard business service from the local exchange carrier, rather than having to obtain access service.

¹³ *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Report and Order released April 27, 2001 ("ISP Remand Order") at ¶ 27.

Transcom is not subscribing to Complainants' local service in lieu of paying access rates. As the FCC stated in the *First Local Competition Order*: "[E]nhanced service providers that do not also provide domestic or international telecommunications, and are thus not telecommunications carriers within the meaning of the Act, may not interconnect under Section 251."¹⁴

The FCC has established a bright-line rule that the "enhanced" service designation also does *not* apply to services that merely "facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service."¹⁵ As the FCC has explained, even where a service "may fall within the literal reading of the enhanced service definition,"¹⁶ it can be "incidental to the underlying service offered to the [end user]."¹⁷ Where that is the case - where the enhancement does not, from the end user's perspective, "alter the fundamental character" of the telephone service - the service remains a "telecommunications service," regardless of whether the technical definition of an "enhanced" service can be stretched to fit the service in question.¹⁸ The FCC concluded that a service is an enhanced service if the information provided is "not incidental" to telecommunications service, but rather is "the essential service provided."¹⁹

¹⁴ *First Local Competition Order*, *supra*, at ¶ 995 (1996).

¹⁵ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Regulation of Prepaid Calling Card Services*, WC Docket No. 03-133 and WC Docket No. 05-68, Order and Notice of Proposed Rulemaking (released February 23, 2005) ("*AT&T Calling Card Decision*"). at ¶ 107; *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, 21958, ¶ 107 (1996).

¹⁶ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21958, ¶ 107.

¹⁷ *AT&T Calling Card Decision*, ¶ 16.

¹⁸ *Id.*

¹⁹ *AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, File No. ENF-88-05, Memorandum Opinion and Order, 4 FCC Rcd 3429, 3431, para. 20 (CCB 1989) (emphasis added).

In the *AT&T IP-in-the-Middle* proceeding, AT&T argued that the insertion of enhancement of protocol conversion in the middle of a call exempted it from access charges.²⁰ The FCC rejected the claim on the basis of both lack of a change recognized by the customer and the similarity of the burden on the terminating company.

End users place calls using the same method, 1+ dialing, that they use for calls on AT&T's circuits switched long-distance network. Customers of AT&T's specific service receive no enhanced functionality by using the service... AT&T's specific service imposes the same burdens on the local exchange as do circuit-switched interexchange calls. Under section 69.5(b) of the Authority's rules, "carrier [access] charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."²¹

The FCC saw "no benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules"²² and explained that its approach was necessary to ensure that AT&T was not "place[d]...at a competitive disadvantage."²³ The FCC further stated that since its ruling of access charge applicability would apply "regardless of whether only one interexchange carrier uses [the enhanced service of] IP transport or instead multiple service providers are involved in providing IP transport, [it is] adopting this order to clarify the application of access charges to these specific services to remedy the current situation in which some carriers may be paying access charges for these services while others are not."²⁴

The FCC applied this same body of case law precedent most recently in its *AT&T Calling Card Decision*, which held, in reliance on a consistent line of precedent dating back two decades, that "the provision of [an] advertising message" to certain long-distance calls "d[id] not in any way alter the fundamental character of" those calls and thus did not transform those calls into "enhanced" services.²⁵ Following its rationale in the *AT&T IP in the Middle Decision*, the FCC rejected the notion that toll services which offered access to stored information (in this instance, calling card calling) provided via IP-transport is exempt from access charges. The enhancement needs to be both known and providing a useful capability.

[W]ithout the advance knowledge or consent of the customer, there is no 'offer' to the customer of anything other than telephone service, nor is the customer provided with the 'capability' to do anything other than make a telephone call.²⁶

Transcom claims to have been found to be an ESP by four different bankruptcy courts, but cites none of them (Motion, p. 4, ¶ 7). Complainants are aware of only one, a Texas bankruptcy matter,²⁷ in which Transcom bought the assets of DataVoN, which, in another Texas bankruptcy proceeding, was found to be providing ESP services, in part because the DataVoN/AT&T interconnection agreement expressly identified DataVoN as "an ESP."²⁸ Transcom asserted that, because it had bought an ESP, whatever operations it had also became ESP. The bankruptcy court undertook no more than cursory review of the FCC cases and, based upon its own in-court precedent, affirmed. A bankruptcy court has no telecommunications

²⁵ *AT&T Calling Card Decision* at ¶ 16, n.28 (where the fundamental nature of the service offered to the end user is telephone service, the service is not an "enhanced" service).

²⁶ *AT&T Calling Card Decision* at ¶ 15.

²⁷ *Transcom Enhanced Services, LLC*, Case No. 05-31929-HDH-11, U.S. Bankruptcy Court, Northern District of Texas, Dallas Division (Memorandum Opinion, signed April 28, 2005) ("*Transcom Bankruptcy*"). The bankruptcy court ruled that Transcom did not owe AT&T access for traffic it delivered to the RLEC. The court made no determination as to whether a delivering IXC, like Halo, would owe access payments.

²⁸ *Id.* at 2-3.

regulatory expertise and is motivated to discharge the debtor from bankruptcy. The Texas bankruptcy case has no precedential value, is not binding on the Authority, and is contrary to the FCC cases cited above.

In the Pennsylvania complaint case, Global NAPs presented a Texas A&M associate professor who testified about Transcom's enhancements having interviewed the company's personnel. He identified four Transcom improvements: packet loss concealment, "short codes," the removal of background noise, and the injection of "comfort noise." The PA PUC rejected the notion that Transcom was enhancing anything:

In view of the evidence presented and the FCC's rulings in the two AT&T cases referenced above [*AT&T VoIP-in-the-Middle* and *AT&T Calling Card*], we find that Transcom does not supply GNAPs with "enhanced" traffic under applicable federal rules. Consequently, such traffic cannot be exempted from the application of appropriate jurisdictional carrier access charges. Also, the Commission is not persuaded by the decision of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, finding Transcom to be an 'enhanced services provider' on the basis that Transcom indicated in that proceeding that it provided 'data communications services over private IP networks (VoIP).' *In re Transcom Enhanced Services, LLC*, No. 05-31929-HDH-11 (Bkrpty. N.D.Tex., April 28, 2005) at 2 (emphasis added).²⁹

Moreover, unless Transcom provides end user services, the enhancements the witness described are of no value. Global NAPs' witness conceded that, in the role of Transcom as a traffic forwarder, "there would be no point in Transcom being in the path at all."³⁰

Nor would it legally matter if Transcom were enhancing the traffic under the precedent of the *Time Warner Declaratory Ruling*.³¹ The fact that the content may be enhanced by someone

²⁹ *Palmerton v. Global NAPs*, *supra*, Order at 37-38. Palmerton, the RLEC bringing the complaint argued that "Palmerton responds that the removal of background noise, the insertion of white noise, and the reinsertion of missing digital packets of an IP-enabled call in their correct location when all the packets of the call become assembled [if they occur at all] are essentially ordinary "call conditioning" functionalities that are "adjunct to the telecommunications provided by Transcom, not enhancements," and that similar call conditioning has been practiced for a very long time even in the more traditional circuit-switched voice telephony." *Id.* at 36.

³⁰ *Id.* at Tr. 989.

else does not change the telecommunication nature of the delivery. The transiting carrier is providing a telecommunications service even if the call was part of an information service. It is entitled to interconnection and must also pay access.

In the *Time Warner Declaratory Ruling*, the FCC ruled upon whether MCI and Sprint were entitled to interconnection on traffic that could be considered an information service (cable VoIP service – the FCC has not determined that fixed VoIP is an information service).³² It held that, irrespective of the originating technology, the deliverer of such traffic would be providing a “telecommunications service.”

We further conclude that the statutory classification of the end-user service, and the classification of VoIP specifically, is not dispositive of the wholesale carrier’s rights under section 251... The Act defines “telecommunications” to mean “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” Finally, any provider of telecommunications services is a “telecommunications carrier” by definition under the Act.³³

It made no difference to the FCC that the traffic delivered was “enhanced” by protocol conversion. The carrier delivering such calls is a telecommunication carrier.

As the FCC further ruled in its *Time Warner Decision*, payments are due regardless of any upstream enhancements (in that case, the originating technology):

... the wholesale telecommunications carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between those two parties. *We make such an arrangement an*

³¹ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, released March 1, 2007, at ¶ 2 (“*Time Warner Declaratory Ruling*”).

³² “TWC purchases wholesale telecommunications services from certain telecommunications carriers, including MCI WorldCom Network Services Inc. (MCI) and Sprint Communications Company, L.P. (Sprint), to connect TWC’s VoIP service customers with the public switched telephone network (PSTN). MCI and Sprint provide transport for the origination and termination on the PSTN through their interconnection agreements with incumbent LECs.” *Time Warner Declaratory Ruling* at ¶ 2.

³³ *Time Warner Declaratory Ruling* at ¶ 9-10.

explicit condition to the section 251 rights provided herein. *See, e.g.,* Verizon Comments at 2 (stating that one of the wholesale services it provides to Time Warner Cable is "administration, payment, and collection of intercarrier compensation"); Sprint Nextel Comments at 5 (offering to provide for its wholesale customers "intercarrier compensation, *including exchange access* and reciprocal compensation").³⁴

These principles were acknowledged and applied by the Georgia PSC in the *Global NAPs*

Docket. The Presiding Officer found and the Georgia PSC concurred that:

While the factual record in this case demonstrates that the traffic is not ESP traffic, Commission jurisdiction over the subject matter is not altered as a result of whether the traffic delivered for termination to the PSTN by GNAPs is or is not ESP traffic delivered to the PSTN for termination or Internet Protocol-enabled ("IP-enabled") traffic. Although the FCC may, in the future, determine that some alternative regulatory framework should apply to these types of traffic, for now it has not. Thus, the FCC's framework, which recognizes this Commission's jurisdiction over intrastate traffic, continues unabated and must and should be applied.³⁵

Thus, Transcom's claim of an ESP exemption is both factually incorrect and legally irrelevant. In view of the established FCC precedent described above, it cannot seriously be argued that Transcom's "voice delivery service" has an ESP component that launders ordinary long distance telephone calls into enhanced service rendered them exempt from access charges.

D. THE TRA HAS THE STATE AUTHORITY TO HEAR THIS CASE

³⁴ *Time Warner Decision* at ¶ 17 (emphasis added).

³⁵ *Global NAPs Initial Decision* at 3; *Global NAPs Order* at 4; *see also Global NAPs Initial Decision* at 9 ("...the FCC has also already determined that the carrier (which would in this case be GNAPs) that delivers traffic for termination to the PSTN is the party with the financial responsibility for the intercarrier compensation (in this case intrastate access charges) associated with that traffic. *See In the Matter of Time Warner Cable Request...*"; *id.* ("These SS7 records demonstrate that the traffic at issue is voice traffic. In their most basic form, the SS7 records demonstrate that purportedly ESP traffic is delivered to the PSTN by a traditional wireline or wireless carrier and is terminated over the PSTN as traditional wireline or wireless traffic. At best, therefore, the traffic is the same type of IP-in-the-Middle traffic that the FCC has decided is subject to access charges. *See In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charge, Order, WC Docket No. 02-361, FCC 04-97, released April 21, 2004 (the "AT&T Decision")* at 1 and n.61. These same conclusions are reached regarding the Commission jurisdiction even if GNAPs had demonstrated that the traffic it delivered to the Independent Companies for termination was ESP or ISP traffic.").

1. TRA's Statutory Authority

Tennessee law establishing the TRA's subject matter jurisdiction over the issues in this docket is clear. Under Tenn. Code Ann. § 65-4-117(a)(1), the Authority has the power to investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility as defined in Tenn. Code Ann. § 65-4-101. Additionally, under Tenn. Code Ann. § 65-4-117(a)(3), the Authority has power to fix just and reasonable standards, classifications, regulations, practices or services to be furnished, imposed, observed and followed thereafter by any public utility. The TRA's jurisdiction is to be liberally construed in favor of the TRA under Tenn. Code Ann. § 65-4-106³⁶. The TRA has a broad grant of authority under Tennessee law over regulated utilities within its jurisdiction. *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S.W. 2d 151, 159 (Tenn.Ct.App.1992). The TRA has the jurisdiction to investigate the issues and facts alleged. An investigation will show that Transcom is a public utility within the regulation of the TRA.

2. The Standard of Review for Granting Tenn. R. Civ. P. 12.02(6) Motions

The authority of the TRA to adjudicate a motion to dismiss is derived from the Tennessee Rules of Civil Procedure through the Uniform Administrative Procedures Act ("UAPA"). Under Tennessee law, a "motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint, not the strength of a plaintiff's proof."³⁷ A

³⁶ The statute provides:

This chapter shall not be construed as being a derogation of the common law, but shall be given liberal construction, and any doubt as to the existence of a power conferred on the authority by this chapter or chapters 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities placed under its jurisdiction by this chapter.

³⁷ *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999); *Bell ex rel. Snyder v. Itard, Merrill, Cullis, Timm, Furen & Ginsberg, P.A.*, 986 S.W.2d 550, 554 (Tenn.1999)

motion to dismiss "admits the truth of all relevant and material averments contained in the complaint, but asserts that such facts do not constitute a cause of action as a matter of law."³⁸ Essentially, the truths set forth are admitted on all relevant and material factual allegations in the complaint. Unless there is no cause of action that results from those facts, the motion to dismiss should be denied. Further, in reviewing a motion to dismiss, the complaint must be construed liberally in favor of the plaintiff by taking all factual allegations in the complaint as true and giving the plaintiff the benefit of all the inferences that can be reasonably drawn from the pleaded facts.³⁹ A dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief or when the complaint is totally lacking in clarity and specificity.⁴⁰ Here, the alleged facts entitle Complainants to relief.

3. TRA Can Investigate Alleged Violations of T.C.A. § 65-35-102(2)

The TRA has jurisdiction to investigate violations of T.C.A. § 65-35-102(2). The Authority may "[i]nvestigate...any matter concerning any public utility..." T.C.A. § 65-4-117(a)(1), emphasis added. "Any matter" includes violations of T.C.A. § 65-35-102(2) which, while mentioning civil and criminal actions and liabilities, does not prohibit the TRA from investigating such allegations and take action, including, but not limited to, fixing just and reasonable standards, practices or services, including prohibiting violations of T.C.A. § 65-35-102(2). T.C.A. § 65-4-117(3). The TRA can impose penalties for violating any of its orders, findings, rules or requirements. T.C.A. § 65-4-120.

³⁸ *Winchester v. Little*, 996 S.W.2d 818, 821-22 (Tenn.Ct.App.1998); *Smith v. First Union Nat'l Bank*, 958 S.W.2d 113, 115 (Tenn.Ct.App.1997).

³⁹ *Id.*

⁴⁰ *Dabbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn.Ct.App.1992).

CONCLUSION

Since the Authority plainly has jurisdiction to hear the merits of this Complaint, the Motion to Dismiss filed by Transcom must be denied.

This 15th day of August, 2011.

Respectfully submitted,


H. LaDon Baltimore, BPR #003836

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CERTIFICATE OF SERVICE


I certify that I have this day served a copy of the foregoing RESPONSE upon the following persons by causing electronic copies of the same to be transmitted to each interested party that has supplied a valid email address, and all other parties to be served via first class mail with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

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This 15th day of August, 2011.


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FILED ELECTRONICALLY IN DOCKET OFFICE ON 08/16/11

August 15, 2011

Hon. Eddie Roberson, Chairman
Tennessee Regulatory Authority
c/o Sharla Dillon, Docket & Records Manager
460 James Robertson Parkway
Nashville, TN 37243

RE: Complaint of TDS Telecom, et. al. v. Halo Wireless, Inc., et. al.
Docket No. 11-00108

Dear Chairman Roberson:

This letter is notification that Complainants in the above referenced matter will not file a response to the Motion to Dismiss filed by Halo Wireless, Inc. ("Halo") due to the filing of bankruptcy by Halo as set forth in its *Suggestion of Bankruptcy* ("Suggestion") filed August 10, 2011 in this docket. Section 362 of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as an automatic stay of administrative action, including further proceedings in this docket. Therefore, petitioners are prohibited from filing a response to Halo's Motion to Dismiss.

Sincerely,



H. LaDon Baltimore
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Attorneys for Petitioners

cc: Paul S. Davidson
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August 16, 2011

Hon. Eddie Roberson, Chairman
Tennessee Regulatory Authority
c/o Sharla Dillon, Docket & Records Manager
460 James Robertson Parkway
Nashville, TN 37243

RE: Complaint of TDS Telecom, et. al. v. Halo Wireless, Inc., et. al., Docket No. 11-00108
ERRATA: August 15, 2011 letter to Chairman Roberson

Dear Chairman Roberson:

In my letter to you dated August 15, 2011, I informed the Tennessee Regulatory Authority that my clients, the Complainants, would not file a Response to Halo Wireless, Inc.'s Motion to Dismiss. The letter incorrectly cites a Georgia Public Service Commission Docket Number. The correct docket number is 34219.

I apologize for the error.

Sincerely,

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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	§	
COMPANY, INC., PEOPLES TELEPHONE	§	
COMPANY, WEST TENNESSEE	§	
TELEPHONE COMPANY, INC., NORTH	§	
CENTRAL TELEPHONE COOP., INC.,	§	DOCKET NO. 1100108
HIGHLAND TELEPHONE COOPERATIVE,	§	
INC., AGAINST HALO WIRELESS, LLC,	§	
TRANSCOM ENHANCES 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	§	

NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE that a **Notice of Removal** of the above entitled action from the Tennessee Regulatory Authority, to the United States District Court for the Middle District of Tennessee, Nashville Division was duly filed on the 19th Day of August 2011 by Halo Wireless, Inc. and Transcom Enhanced Services pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure in the United States District Court for the United States District Court for the Middle District of Tennessee, Nashville Division. A true and correct copy of such Notice of Removal is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure, no further action can be taken

in the above captioned proceeding unless otherwise ordered by the district court or a subdivision thereof.

Respectfully submitted this 19th day of August, 2011.


PAUL S. DAVIDSON

Tennessee Bar No. 011789

JAMES M. WEAVER

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*Attorneys for Halo, Wireless, Inc. and Transcom
Enhanced Services, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Removal* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and other designated contact individuals on this the 19th day of August, 2011:

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
COMPANY, TENNESSEE TELEPHONE COMPANY, CROCKETT
TELEPHONE COMPANY, INC. PEOPLES TELEPHONE COMPANY, WEST
TENNESSEE TELEPHONE COMPANY, INC., NORTH CENTRAL
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