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Hon. Kenneth C. Hill, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

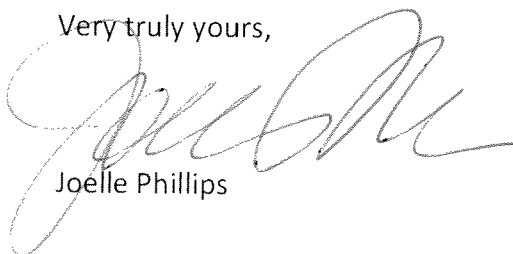
Re: *Complaint of BellSouth Telecommunications, Inc. dba AT&T Tennessee v. Halo Wireless, Inc.*  
Docket No. 11-00119

Dear Chairman Hill:

Enclosed are the original and four copies of the following documents on behalf of AT&T Tennessee in the referenced matter:

Rebuttal Testimony of Mark Neinast  
Rebuttal Testimony of Scott McPhee.

Very truly yours,



Joelle Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In re: *BellSouth Telecommunications, LLC dba AT&T Tennessee v. Halo Wireless, Inc.*

Docket No. 11-00119

**REBUTTAL TESTIMONY OF MARK NEINAST  
ON BEHALF OF THE AT&T TENNESSEE**

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Mark Neinast. My business address is 308 S. Akard, Dallas, Texas 75202.

**Q. ARE YOU THE SAME MARK NEINAST THAT FILED DIRECT TESTIMONY  
ON DECEMBER 19, 2011?**

A. Yes.

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

A. I will respond to certain technical aspects of Mr. Russ Wiseman's direct testimony. In particular, I will explain that Mr. Wiseman has admitted that Halo is sending AT&T landline-originated traffic (in breach of the parties' wireless interconnection agreement ("ICA")) and that his purported excuses for this breach – namely, that the Calling Party Number ("CPN") does not tell where a call originates and that calls can somehow be changed from landline to wireless in the middle of the call – are baseless. I will also explain that Halo has admitted to manipulating the call detail on the traffic it sends to AT&T and that this violates both the ICA and industry practices. This practice has been in use for almost twenty years, since the development of SS7. Finally, I will explain why Mr. Wiseman's argument that Halo does not owe AT&T any facilities charges has no merit.

1           Generally speaking, Halo is engaged in a multi-million dollar traffic laundering  
2           scheme. The FCC has called Halo out by name and found that Halo's theory for avoiding  
3           access charges is wrong. My non-legal lay understanding is that Halo's misconduct and  
4           breach of contract should nullify the ICA.

5           **II. HALO'S SENDING OF LANDLINE-ORIGINATED TRAFFIC**

6   **Q.   YOU EXPLAINED IN YOUR DIRECT TESTIMONY THAT THE ICA**  
7   **REQUIRES HALO TO SEND ONLY WIRELESS-ORIGINATED TRAFFIC TO**  
8   **AT&T, BUT THAT HALO IS ACTUALLY SENDING LANDLINE-**  
9   **ORIGINATED TRAFFIC TO AT&T. DOES HALO DENY THIS?**

10  
11   **A.**   No. To the contrary, Mr. Wiseman admits (at 14, lines 14-15) that "[m]ost of the calls"  
12       Halo sends to AT&T "probably did start on other networks," and that it "would not  
13       surprise" him if they began on the networks of landline carriers. Nevertheless, Halo  
14       argues that the TRA should simply ignore whether the calls "actually 'started' on another  
15       network." Wiseman Direct at 6, line 7. Halo wants the TRA to ignore this fact because it  
16       proves Halo's breach of the ICA.

17   **Q.   IN YOUR DIRECT TESTIMONY YOU SHOWED THAT HALO WAS SENDING**  
18   **AT&T LANDLINE-ORIGINATED TRAFFIC BY LOOKING AT THE CALLING**  
19   **PARTY NUMBER, OR "CPN," OF THE PERSON WHO ORIGINATED THE**  
20   **CALL. DOES MR. WISEMAN ADDRESS THE USE OF CPN TO TELL WHERE**  
21   **A CALL ORIGINATED?**

22  
23   **A.**   Yes, but his position makes no sense.

24   **Q.   PLEASE EXPLAIN.**

25   **A.**   Mr. Wiseman claims (at 16, lines 8 and 12) that CPN "is not a reliable way to determine  
26       the starting location of a call" and "is [not] determinative to call rating." That is absurd.  
27       Remember that AT&T's call study, which I discussed in my direct testimony, was  
28       primarily designed to determine whether Halo was sending AT&T any landline-  
29       originated traffic. For landline traffic (such as landline TDM and fixed-IP originated

1 traffic), the CPN is 100% accurate in determining the starting point of the call, because  
2 the caller is always physically in the same place. Thus, there is absolutely no doubt that  
3 CPN is the most accurate way to determine where a landline call began, and it is what the  
4 entire industry uses for that purpose.

5 **Q. WHAT ABOUT MR. WISEMAN’S CLAIM (AT 16 LINE 8) THAT CPN IS NOT**  
6 **DETERMINATIVE FOR CALL RATING PURPOSES?**

7  
8 A. I note that Mr. Wiseman’s full quote is that CPN “is [not] determinative to call rating for  
9 our CMRS traffic.” He is missing the point. While CPN is indeed used for call rating on  
10 wireless traffic, the key point here is whether Halo has been sending AT&T landline-  
11 originated traffic (and whether that traffic is toll or local). As I just explained, the entire  
12 industry uses CPN to determine where landline calls began.

13 **Q. MR. WISEMAN STATES (AT 6, LINES 4-5) THAT HALO END USERS**  
14 **WIRELESSLY ORIGINATE ALL OF THE TRAFFIC HALO SENDS TO AT&T.**  
15 **IS THAT TRUE?**

16 A. Absolutely not. Halo is simply playing word games. Mr. Wiseman claims that on all of  
17 the traffic Halo sends to AT&T, Halo’s “end user customer ‘originates’ the  
18 communications ‘through wireless transmitting and receiving facilities.’” As I discussed  
19 in my direct testimony, however, AT&T has performed call studies proving that the vast  
20 majority (74%) of the calls Halo sends to AT&T originated from landline carriers. In  
21 fact, no calls are originated by Halo or Transcom. The so-called “end user customer” that  
22 Halo keeps referring to is Transcom, and, as our call study showed, Transcom is *not*  
23 where any of these calls actually originated. Rather, landline-originated calls merely pass  
24 through Transcom on the way to Halo, and since Transcom has some wireless equipment,  
25 Halo tries to pretend that the call has magically morphed from landline-originated to  
26 wireless-originated. Halo then perpetuates the scheme by inserting its own Charge

1 Number (CN) in the call data – a change that is not authorized by, or even known by, the  
2 person who actually made the call – and then pretends that the call has magically  
3 morphed from a toll call to a local call. But populating a data field does not re-originate a  
4 call, and neither does passing the call through some entity that the actual caller does not  
5 even know exists.

6 The only people in the industry that seem to believe Halo's story are the people  
7 that are telling it – Halo and Transcom – which explains the multiple complaint cases  
8 pending against Halo by numerous carriers across the nation. As I stated in my direct  
9 testimony, billing systems are programmed to use CN if it is different than the CPN,  
10 which is true for all of Halo's traffic and Halo was fully aware of this fact when it  
11 established its business model. This is analogous to changing the label on an inexpensive  
12 watch to make it appear to be a more expensive watch. The label does not change the  
13 quality of the watch, and altering the call detail does not change the nature of the call.  
14 There is no technical reason for doing this. Instead, it appears to be nothing more than an  
15 attempt to defraud the companies that are terminating this traffic, just like a con artist  
16 changes the label on a watch to defraud the purchaser.

17 **Q. HOW DO YOU RESPOND TO MR. WISEMAN'S CLAIM THAT TRANSCOM IS**  
18 **AN ENHANCED SERVICE PROVIDER ("ESP") AND THAT THIS SOMEHOW**  
19 **CHANGES THE NATURE OF THE TRAFFIC HALO SENDS TO AT&T?**

20 **A.** Mr. Wiseman is incorrect. Although I am not an attorney and this is more of a legal issue  
21 to be addressed in briefs, two things are plain. First, it does not matter whether Transcom  
22 could qualify as an ESP. because the case here involves *Halo's* obligations under its ICA  
23 with AT&T and, as I have discussed, Halo has been breaching the ICA in multiple ways.  
24 Transcom cannot "launder" traffic for Halo in any way that allows Halo to breach its  
25 duties under the ICA.

1           Second, although it does not matter whether Transcom is an ESP or not, there is  
2 no evidence that Transcom could actually qualify as an ESP. Mr. Wiseman presents no  
3 such evidence in his testimony. Indeed, he hardly discusses what Transcom does at all.  
4 Moreover, there is no evidence that Transcom “enhances” the calls it sends to Halo in any  
5 way. An enhancement is something that the originating party subscribes to, such as  
6 additional information that is added to the call (the “enhancement”). None of this occurs  
7 in the traffic that Halo is delivering to AT&T. Halo claims (at 11, lines 1-3) Transcom  
8 “routinely makes non-trivial changes to user-supplied information,” but the facts  
9 represent that the only change is the insertion of a CN. These are just plain voice calls to  
10 end users in Tennessee. In addition, regardless of what Transcom does or does not do,  
11 the actual originating party that placed a call destined for someone in Tennessee is totally  
12 unaware that their call was routed in this manner. .

13 **Q. MR. WISEMAN DISCUSSES AT LENGTH (AT 6-8) THE 3650Mhz SERVICE**  
14 **THAT HALO IS LICENSED TO PROVIDE. IS THAT RELEVANT TO THIS**  
15 **CASE?**

16 A. Only to the extent it shows Halo’s conduct has been misleading from the very start.  
17 3650Mhz service and licenses are generally designed to offer wireless broadband service  
18 to rural customers. That is how Halo originally told AT&T (and the FCC) it would  
19 operate, by installing antennas in a rural area to provide Wi-Fi broadband to those rural  
20 subscribers that may not have access to DSL or cable modems. If any of these callers  
21 were to terminate traffic to AT&T, the Halo telephone number assigned to them would  
22 have been in the CPN field and there would be no need for Halo to trick the system by  
23 inserting its own CN. I have seen no calls that fit this description in the AT&T call  
24 studies. All of the calls involved in this Complaint are originated by other carriers that  
25 have presumably contracted with Transcom to deliver the calls through Halo’s ICA to

1 AT&T. This suggests to me that Halo and Transcom had their access-charge avoidance  
2 scheme planned out from the start, but managed to avoid detection by having Halo  
3 pretend to be something it is not.

4 **Q. MR. WISEMAN DESCRIBES A CALL SCENARIO ON PAGE 17 BEGINNING**  
5 **AT LINE 8 ABOUT CALLS MADE FROM SMART PHONES. IS THIS**  
6 **RELEVANT TO THIS CASE?**

7 A. No. While it is true that smart phones have data capability and callers can originate calls  
8 using their data side of the phone, those calls are treated within the industry as IP-  
9 originated and would not be routed through a wireless trunking network to the PSTN, as  
10 Halo is doing. Instead of clearly describing IP-originated traffic separate and aside from  
11 wireless, Wiseman meshes it all together to make it more difficult to understand. The  
12 industry treats IP-originated traffic just like landline traffic.

### 13 **III. HALO'S ALTERING OF CHARGE NUMBER (CN) DATA**

14 **Q. IN YOUR DIRECT TESTIMONY (AT 14-17) YOU SHOWED THAT HALO HAS**  
15 **BEEN ALTERING CHARGE NUMBER ("CN") DATA IN ORDER TO**  
16 **DISGUISE TOLL CALLS AND MAKE THEM APPEAR TO BE LOCAL, SO**  
17 **THAT HALO COULD AVOID PAYING THE APPLICABLE ACCESS**  
18 **CHARGES. DOES HALO ADMIT DOING THIS?**

19 A. Yes. As I discussed, when used legitimately, CN appears on a very small number of calls  
20 and is typically within the same NPA-NXX as the Calling Party's Number. Halo,  
21 however, has been inserting its own CN on *all* of the calls it sends to AT&T, even though  
22 the calling party has not asked or arranged to have a CN inserted. Halo is doing this to  
23 disguise toll calls as local calls (by using a CN that is local to the terminating number) in  
24 order to avoid the applicable access charges. Mr. Wiseman admits (at 26, lines 13-14)  
25 that Halo does this, saying that Halo "populate[s] the Charge Number parameter with the  
26 Billing Telephone Number of our end user customer ...." Of course, the so-called "end  
27 user customer" here is Transcom, *not* the actual party that originated the call or anyone

1 affiliated with that party (such as their employer). There is no possible reason to insert  
2 CN in this manner, other than to improperly avoid access charges.

3 **Q. MR. WISEMAN (AT 28-29) DISCUSSES AN INDUSTRY PRACTICE WHERE**  
4 **CN IS USED DURING CALL FORWARDING FOR THE SECOND LEG OF A**  
5 **CALL. HOW DOES THIS COMPARE WITH HALO'S USE OF CN?**

6 A. What Mr. Wiseman described in his testimony, is a legitimate use of CN in the industry  
7 to account for an end user making a toll call, so that the proper customer is charged for  
8 that call. An example is when customer "A" calls customer "B", which is a local "free"  
9 call, but customer "B" has forwarded their number to customer "C", which is a toll call.  
10 Customer "A" had no knowledge of dialing a toll call and customer "B" was the cost  
11 causer of the toll call, so the practice is that customer "B" telephone number is  
12 legitimately in the CN field to pay the toll charges incurred from call forwarding to a toll  
13 number. Halo, on the other hand, is doing the opposite. Rather than using CN to ensure  
14 that a toll call is actually treated as a toll call and subject to toll charges and access  
15 charges, Halo is inserting CN to make a toll call look like a local call, and thus *avoid*  
16 having it treated like a toll call and avoid paying access charges. While proper use of CN  
17 with call forwarding ensures that the cost-causer pays the applicable toll charges, Halo is  
18 trying to misuse CN so that nobody pays the applicable toll charges. Halo's use of CN is  
19 not within industry practices.

20 **Q. ARE THERE ANY OTHER INSTANCES WHERE CN IS USED TO TRACK**  
21 **TOLL CHARGES?**

22 A. Yes. Services that use older signaling types, such as multifrequency (MF), use ANI  
23 (Automatic Number Identification) for the originating number, instead of CPN. If a call  
24 routes over an MF trunk for one leg of a call, but the second leg of the call uses SS7, the  
25 ANI digits are used in the CN field to ensure the appropriate customer is billed for any



1 toll charges for the call. AT&T has filed a waiver with the FCC for services that utilize  
2 MF signaling to continue the use of these services, since these services will not use CPN.  
3 Again, these services track toll usage for proper billing and there is no foul play to avoid  
4 access charges, unlike Halo's use of CN.

5 **Q. MR. WISEMAN (AT 31-32) DEFENDS HALO'S INSERTION OF CN AS BEING**  
6 **CONSISTENT WITH THE PARTIES' ICA. IS IT?**

7 A. No. First, Mr. Wiseman claims (at 32, lines 4-5) that Halo is "using industry standards"  
8 when it inserts a CN into the call data in order to disguise toll calls as local. In truth, that  
9 is directly contrary to industry standards. Halo is the only carrier I know of that  
10 deliberately alters call detail in this way. Moreover, the FCC just issued strong new rules  
11 to prevent carriers from altering call detail information, which obviously would not have  
12 been necessary if altering such information were an accepted industry standard. The  
13 industry standard practice regarding CN is that when CN applies (which is not very often)  
14 it is used to determine the account (end user) that is responsible for toll charges, not  
15 inserted indiscriminately by the terminating carrier to change the jurisdiction or type of  
16 call, e.g. from landline to wireless.

17 Second, Mr. Wiseman's claim that Halo is merely providing AT&T with  
18 "additional information" by "populat[ing] both the CPN *and* the CN"<sup>1</sup> is especially  
19 outrageous. Halo is not giving AT&T "additional" information – it is giving AT&T *false*  
20 information, for the sole purpose of avoiding access charges. That obviously breaches  
21 the ICA's requirement in Section XIV.G to provide "proper call information ... to enable  
22 each party to bill properly."

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<sup>1</sup> Wiseman Direct at 32, lines 6-7 (Halo's emphasis).

1 Third, Mr. Wiseman emphasizes that all CCS signaling parameters will be  
2 provided, as well as the CN. But that only means that if the originating carrier sends a  
3 call that has data in that field that the said data will be provided. It does not mean that  
4 Halo can insert data that is not there. Nor does it give Halo a license to do so. Halo's  
5 population of the CN field is a manipulation of the field, since it was not populated by the  
6 originating carrier on behalf of its end user that originated the call.

7 **Q. BUT MR. WISEMAN CLAIMS (AT 32) THAT INSERTING A FALSE CN DOES**  
8 **NOT AFFECT AT&T'S ABILITY TO BILL HALO. IS HE CORRECT?**

9 A. No. Even for wireless-originated traffic (to the extent Halo sends any to AT&T), the ICA  
10 uses a factor for AT&T to bill Halo for interMTA and intraMTA traffic. ICA Sections  
11 IV.F, VI.C.3. That factor, however, is auditable and can be changed by AT&T when an  
12 audit shows that the current factor is inaccurate. *Id.* By sending AT&T false CN, Halo  
13 makes the auditing process much more difficult.

#### 14 **IV. FACILITY CHARGES**

15 **Q. MR. WISEMAN DISCUSSES THE FACILITY CHARGES THAT HALO OWES**  
16 **TO AT&T FOR TERMINATING ITS TRAFFIC. PLEASE RESPOND.**

17 A. As I discussed in my direct testimony, Mr. Wiseman confuses Halo's interconnection  
18 arrangements with those of a CLEC. Halo adopted a T-Mobile ICA and therefore must  
19 follow the rules of a *wireless* carrier for purposes of interconnection facilities. Wireless  
20 carriers have been interconnected since before the Telecom Act of 1996 and it is a  
21 common practice between LECs and wireless carriers to use a shared facility factor based  
22 on the direction of traffic. In other words, since Halo terminates 100% of the traffic to  
23 AT&T, then Halo bears the full cost of the facilities it leases to connect to AT&T. These  
24 costs are outlined, per the ICA, in AT&T's tariff, which is typical in all wireless

1           agreements.<sup>2</sup> This is yet another way Halo is attempting to avoid its financial obligations  
2           to AT&T and the TRA should not allow this.

3   **Q.     DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4   A.     Yes.

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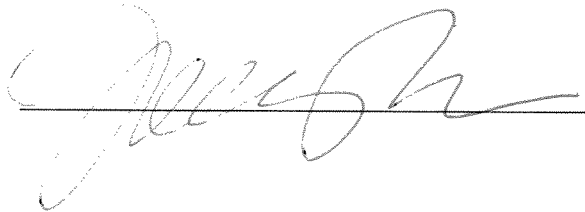
<sup>2</sup> ICA Section IV. Methods of Interconnection B. “Type 1, Type 2A and Type 2B interconnection arrangements described in BellSouth’s General Subscriber Services Tariff, Section A35”.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2012, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
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A handwritten signature in cursive script, appearing to read "Paul Davidson", is written over a horizontal line.