



Joelle Phillips
General Attorney - TN

AT&T Tennessee
333 Commerce Street
Suite 2101
Nashville, TN 37201-1800

T: 615.214.6311
F: 615.214.7406
jp3881@att.com

January 3, 2012

VIA HAND DELIVERY

filed electronically in docket office on 01/03/12

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

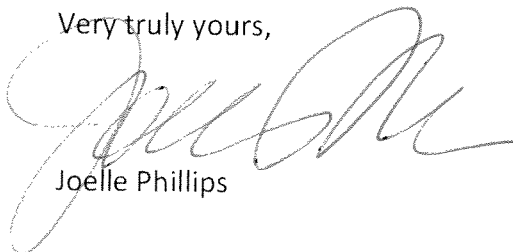
Re: *Complaint of BellSouth Telecommunications, Inc. dba AT&T Tennessee v. Halo Wireless, Inc.*
Docket No. 11-00119

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 J. SCOTT MCPHEE
ON BEHALF OF THE AT&T TENNESSEE**

Q. PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.

A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon, California.

Q. ARE YOU THE SAME SCOTT MCPHEE THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will respond to various points made by Halo witness Russ Wiseman as they pertain to the issues in dispute in this proceeding. Mr. Wiseman discusses several points that have no direct bearing on the disputes in this case, trying to make the disputes seem far more complex than they actually are. In contrast, I will focus on the few pertinent points and provide relevant responses.

As Mr. Neinast and I discussed in our direct testimony, the disputes here involve Halo's material breaches of the parties' interconnection agreement ("ICA"). Mr. Wiseman's direct testimony essentially admits these breaches are occurring. In particular, Halo admits that the ICA requires Halo to send only wireless-originated traffic to AT&T, but that Halo is actually sending AT&T traffic originated on the networks of landline carriers. Halo also admits that the ICA requires it to send AT&T accurate call

1 detail information, but that Halo is altering the call detail information it sends to AT&T
2 in order to avoid paying access charges on the traffic sent to AT&T. Halo's purported
3 excuses for breaching the ICA have no merit, as Mr. Neinast and I discuss.

4 Given Halo's admissions and the facts set forth in AT&T's direct testimony, there
5 is no doubt that Halo has been materially breaching the ICA. In light of those breaches,
6 the Authority should authorize AT&T to terminate the ICA immediately and stop
7 accepting traffic from Halo, and declare that AT&T is entitled to recover the applicable
8 access charges on all traffic Halo has sent to AT&T, along with the interconnection
9 facilities charges that Halo owes under the plain language of the ICA.

10 **Q. IS MR. WISEMAN'S DISCUSSION OF HALO'S "FCC LICENSING" ON PAGES**
11 **2-3, AND HIS DISCUSSION OF "HALO'S SERVICES" ON PAGES 6-8,**
12 **RELEVANT TO THE DISPUTES IN THIS PROCEEDING?**
13

14 **A.** No. Regardless of Halo's licensing or purported categorization of its services, Halo
15 adopted and entered into an ICA with AT&T for the purpose of exchanging wireless (or
16 "commercial mobile radio service" ("CMRS")) traffic with AT&T. AT&T has asserted a
17 claim for breach of the ICA. One manner in which Halo has breached the ICA is by
18 failing to abide by the ICA's requirement that Halo deliver to AT&T only wireless-
19 originated traffic. Instead of sending exclusively wireless-originated traffic as required
20 by its ICA, Halo is sending large amounts of landline-originated traffic, which Halo has
21 attempted to disguise as wireless traffic by altering the call detail information. As I
22 discussed in my Direct Testimony at page 6, and as Mr. Wiseman acknowledges on page
23 5 of his Direct Testimony, the ICA contains this clause:

24 Whereas, the Parties have agreed that this Agreement will apply only to
25 (1) traffic that originates on AT&T's network or is transited through
26 AT&T's network and is routed to Carrier's wireless network for wireless
27 termination by Carrier; and (2) *traffic that originates through wireless*

1 *transmitting and receiving facilities before [Halo] delivers traffic to*
2 *AT&T* for termination by AT&T or for transit to another network.
3 (Emphasis added).
4

5 Regardless of Halo's FCC licensing, Halo entered into an ICA with AT&T providing that
6 Halo would *only* send to AT&T wireless-originated traffic. As AT&T has shown,
7 however, and as Mr. Wiseman effectively admits, Halo has been sending AT&T
8 significant amounts of traffic that began on the networks of landline carriers, and
9 therefore is *not* wireless-originated.

10 **Q. MR. WISEMAN CLAIMS (AT PAGE 5) THAT THE ABOVE PROVISION WAS**
11 **NEGOTIATED IN ORDER TO SETTLE A DISPUTE HALO FILED AT THE**
12 **FCC. IS THAT RELEVANT HERE?**
13

14 **A.** No. The provision is part of the final, approved ICA. Mr. Wiseman's belief that this
15 provision should only be interpreted by the FCC is simply wrong, as the Authority
16 recognized in denying Halo's motion to dismiss. The Authority is the proper venue for
17 resolving this ICA dispute.

18 **Q. MR. WISEMAN DISCUSSES HALO'S RELATIONSHIP WITH TRANSCOM ON**
19 **PAGES 8-14. DOES AT&T HAVE A CONTRACTUAL RELATIONSHIP WITH**
20 **TRANSCOM?**
21

22 **A.** No. AT&T has an ICA with Halo, and that ICA is the only contract at issue here. It is
23 true that, as far as I can tell, the principals of Transcom created Halo to carry traffic from
24 Transcom after the two prior carriers that Transcom used (Global NAPs ("GNAPS") and
25 CommPartners) declared bankruptcy, and that Halo and Transcom worked together to
26 devise a scheme where Transcom's locations are always located next to Halo's locations
27 so that Halo can try to claim that all the traffic filtered through Transcom is "local." The
28 fact that Halo and Transcom appear to have worked together to create an arrangement to
29 "launder" traffic, however, does not absolve Halo from its breaches of the ICA.

1 **Q. MR, WISEMAN ALLEGES, ON PAGE 9, THAT TRANCOM IS AN ENHANCED**
2 **SERVICE PROVIDER (“ESP”). HOW DOES TRANSCOM OR TRANSCOM’S**
3 **ALLEGED STATUS AS AN ESP AFFECT THE ICA BETWEEN HALO AND**
4 **AT&T?**

5
6 A. The existence of Transcom, as an ESP or otherwise, has no bearing on the ICA between
7 AT&T and Halo, and it is not relevant to AT&T’s claim that Halo has breached the ICA.
8 Mr. Wiseman apparently discusses Transcom and the assertion that Transcom is an ESP
9 in order to attempt to assemble an argument that Halo is sending Transcom’s “ESP
10 traffic” to AT&T and that switched access charges do not apply to this traffic.

11 Transcom and its alleged “ESP traffic” have no bearing whatsoever on the ICA
12 between Halo and AT&T because the specific terms of the ICA require that Halo only
13 send to AT&T wireless-originated traffic. Halo is not doing that. Rather, as Mr. Neinast
14 showed in his direct testimony, about 74% of the traffic Halo sends to AT&T originates
15 with a landline carrier.

16 Indeed, the FCC was well aware of Halo’s claim that the traffic it sends to AT&T
17 or other LECs passes through an alleged ESP before reaching Halo and that this means
18 the calls somehow originated with the alleged ESP, but the FCC held that this
19 arrangement did not change where the call had actually originated.¹ Moreover, while
20 Transcom’s alleged status as an ESP could not excuse Halo’s breaches of the ICA even if
21 were true, there is no reason to believe it is true because, as Mr. Neinast explains,
22 Transcom does not enhance calls that pass through it and does not make any
23 improvement that is known to the end user.

24 **Q. WHEN HALO ORIGINALLY ADOPTED THE AT&T/T-MOBILE WIRELESS**
25 **ICA, DID HALO CONVEY TO AT&T THAT IT INTENDED TO EXCHANGE**
26 **WIRELINE-ORIGINATED OR ALLEGED ESP TRAFFIC?**

¹ Report and Order and Further Notice of Rulemaking, FCC 11-161, released November 29, 2011, at ¶¶ 1005-06.

1 A. No. Halo's testimony and Halo's recent legal argument before the TRA emphasize
2 Halo's reliance on bankruptcy court rulings in a different case to create a particular
3 business model involving an alleged ESP (Transcom), but Halo did not disclose that
4 business model to AT&T at the time it negotiated the ICA. I was not a party to the
5 discussions between Halo and AT&T when Halo sought to enter into an ICA with
6 AT&T, but I have researched the circumstances and learned that Halo portrayed itself as
7 a rural wireless carrier in its communications with AT&T's negotiator and negotiating
8 attorney. Similarly, as recently as December 2, 2011, Halo advised the Public Service
9 Commission of Wisconsin that "Halo's business model is designed to deliver 4G
10 WiMAX broadband voice and data services to unserved and underserved rural areas
11 without taxpayer dollars or subsidies."² Such a statement implies that Halo will have
12 wireless end users (individuals) that live in rural areas. To the best of my knowledge,
13 Halo has no such end users in Tennessee.

14 **Q. WOULD AT&T HAVE ENTERED INTO THIS ICA IF HALO HAD ADVISED**
15 **AT&T OF ITS INTENT TO EXCHANGE LANDLINE-ORIGINATED OR**
16 **ALLEGED ESP TRAFFIC WITH AT&T?**
17

18 A. No, because the ICA terms do not contemplate the exchange of landline-originated traffic
19 or alleged ESP traffic. The purpose of an ICA is to provide complete and clear terms and
20 conditions under which the parties to that ICA will exchange traffic for a predetermined
21 period of time, such as three years. If Halo had conveyed its intent to exchange a specific
22 type of non-CMRS traffic, such as ESP traffic, the ICA would have needed to address

² Halo Wireless, Inc. and Transcom Enhanced Services, Inc.'s Answers on Issues 1-8 in the Notice of Proceeding., at 4, Pub. Serv. Comm'n of Wisc. Docket No. 9594-TI-100 (filed Dec. 2, 2011).

1 that type of traffic.³ Specifically, if Halo had advised AT&T of its intent to exchange
2 landline-originated traffic, AT&T would have taken measures to ensure Halo was
3 certificated in the state of Tennessee as a landline Competitive Local Exchange Carrier
4 (“CLEC”) and worked with Halo to incorporate appropriate provisions into a CLEC ICA.
5 As I mentioned in my Direct Testimony (at 5), there are different types of ICAs, with
6 different provisions, for wireless carriers and landline carriers. There are also standard
7 ICA provisions to deal with various types of traffic, like foreign exchange (“FX”) or ISP-
8 bound traffic. If disagreement existed between the parties regarding the appropriate
9 terms and conditions to address a specific type of traffic, the parties would negotiate and,
10 if necessary, arbitrate before the TRA to determine proper ICA provisions. Arbitration
11 allows carriers to hash out and resolve these kinds of disputes and create appropriate
12 contract terms to protect themselves before entering an ICA, but Halo prevented that –
13 and created the current situation where Halo has run up huge amounts owed to AT&T
14 and then declared bankruptcy to avoid paying them – by failing to be up-front about its
15 planned operations.

16 **Q. HALO ALSO ASSERTS THAT ALL OF THE TRAFFIC IT SENDS TO AT&T IS**
17 **WIRELESS-ORIGINATED. IS THIS ACCURATE?**

18
19 **A.** No, it is not. First, Mr. Wiseman, at page 14, lines 14-15, acknowledges that “[m]ost of
20 the calls probably did start on other networks before they came to Transcom for
21 processing. It would not surprise me if some of them started on the PSTN.” “PSTN”
22 means Public Switched Telephone Network, which in this case means landline-originated
23 calls. As AT&T witness Mark Neinast discusses in his Direct and Rebuttal Testimony,
24 the overwhelming majority of the traffic Halo sends to AT&T is landline-originated

³ The ICA between AT&T and Halo contains no instances of the words “enhanced,” “ESP,” “IP,” “internet” or “ISP.”

1 traffic. Second, despite this fact, Mr. Wiseman tries to claim that even though calls
2 originate on landline networks, Transcom somehow “re-originate” each call before it
3 reaches Halo, thus transforming landline-originated calls into wireless-originated calls
4 (because Transcom uses some wireless equipment), and toll calls into local calls. But
5 these certainly are not wireless-originated calls, as the FCC recently held. At best, the
6 traffic may traverse a wireless connection somewhere in Halo’s network, so that the calls
7 could be characterized as “wireless in the middle.” Wireless traffic, like landline traffic,
8 only truly originates once – by the end user that dials the telephone number necessary to
9 initiate a telephone call to another end user.

10 **Q. HAS THE FCC RECENTLY OPINED ON “WIRELESS IN THE MIDDLE”**
11 **TRAFFIC?**

12
13 **A.** Yes. In its recent Report and Order and Further Notice of Rulemaking, FCC 11-161,
14 released November 29, 2011, the FCC specifically discussed Halo’s operations, including
15 the claim that Halo’s traffic is first passed through an alleged ESP that purportedly re-
16 originates the call on wireless equipment. The FCC rejected that claim:

17 We clarify that a call is considered to be originated by a CMRS provider for
18 purposes of the intraMTA rule **only if the calling party initiating the call has**
19 **done so through a CMRS provider.** Where a provider is merely providing a
20 transiting service, it is well established that a transiting carrier is not considered
21 the originating carrier for purposes of the reciprocal compensation rules. Thus,
22 we agree with NECA that **the “re-origination” of a call over a wireless link in**
23 **the middle of the call path does not convert a wireline-originated call into a**
24 **CMRS-originated call for purposes of reciprocal compensation and we**
25 **disagree with Halo’s contrary position.**⁴
26

27 As Mr. Wiseman has testified in this proceeding, Halo is transmitting traffic to AT&T
28 that is not wireless-originated traffic. All of this landline-originated traffic is in clear
29 violation of the terms of the ICA between Halo and AT&T.

⁴ Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 1006 (emphasis added).

1 **Q. MR. WISEMAN DESCRIBES A SCENARIO ON PAGES 17 AND 18 WHERE A**
2 **SMARTPHONE USER MAY USE A THIRD PARTY APPLICATION SUCH HAS**
3 **SKYPE OR GOOGLE VOICE TO ORIGINATE A TELEPHONE CALL. IS THIS**
4 **HYPOTHETICAL SCENARIO RELEVANT TO THE DISPUTES IN THIS**
5 **PROCEEDING?**

6
7 **A.** No. Mr. Wiseman describes a scenario where a call is originated over a broadband
8 connection, via an ESP, and not “through a CMRS provider” as is necessary pursuant to
9 the parties’ ICA. Furthermore, neither Halo nor Mr. Wiseman has stated that Halo has a
10 relationship with any of these types of voice over IP services.

11 **Q. MR. WISEMAN DISCUSSES INTERMEDIARY, OR TRANSIT, TRAFFIC ON**
12 **PAGES 24 AND 25. IS THIS TRAFFIC ORIGINATED BY HALO’S**
13 **CUSTOMER, TRANSCOM, AS HE ASSERTS?**
14

15 **A.** No. Mr. Wiseman relies upon the same flawed justification for transit traffic as he does
16 for all other traffic: that somehow transit calls sent to AT&T from Halo are “originated”
17 by its customer, Transcom. As I have discussed, they are not.

18 **Q. WITH RESPECT TO ACCESS TRAFFIC, MR. WISEMAN ASSERTS, AT PAGE**
19 **25, LINE 27, THAT THE ICA’S 1% FACTOR FOR ACCESS TRAFFIC WAS**
20 **THE RESULT OF “MUTUAL AGREEMENT” AND IS BINDING UNTIL**
21 **“CHANGED BY MUTUAL AGREEMENT” (PAGE 26, LINE 2). DO YOU**
22 **AGREE?**
23

24 **A.** No. First and foremost, the ICA only allows Halo to send wireless-originated traffic to
25 AT&T. Thus, the former 1% factor for access traffic could, by definition, apply only to
26 wireless-originated traffic. The vast majority of the traffic Halo has been sending AT&T,
27 however, is landline-originated, and the 1% factor is irrelevant to such traffic, which
28 would instead be subject to AT&T’s tariffed access charges.

29 Second, the 1% factor for switched access traffic that Mr. Wiseman refers to –
30 which does not apply to landline-originated traffic – is a default factor “[f]or Carriers that
31 have not exchanged traffic under a previous CMRS interconnection agreement with

1 BellSouth or for traffic categories that are not technically feasible to measure.” ICA
2 Section VII.E (included in Attachment JSM-1 to my Direct Testimony). In addition to
3 this default factor, the ICA provides for the use of “auditable” Percent Local Usage
4 (“PLU”) and “auditable” Percent Interstate Usage (“PIU”) factors for the purpose of
5 appropriately billing switched access rates to non-local (wireless) traffic. ICA Section
6 VII.D addresses how updated factors may be applied:

7 Where technically possible to measure traffic for classifying traffic
8 percentage’s, the Parties shall utilize actual traffic measurements to
9 classify traffic in each of the categories shown in subsection E. below.
10 BellSouth may conduct periodic reviews of Carriers’ traffic classification
11 percentage’s and shall update those percentages for the aforementioned
12 traffic accordingly.
13

14 Contrary to Mr. Wiseman’s assertion, the ICA provides that AT&T can unilaterally
15 update the percentages for purposes of billing switched access if it is technically possible
16 for AT&T to measure traffic for classification. AT&T has determined that the PLU and
17 the PIU for the wireless traffic that Halo sends to AT&T are different than the default
18 percentages. Accordingly, AT&T notified Halo that it intended to bill Halo using
19 updated factors for wireless traffic in its May 13, 2011 Demand Letter to Halo.⁵ That
20 letter communicated new factors to Halo for wireless traffic subject to switched access
21 rates, based upon actual traffic data. See Attachment JSM-3, as well as Halo’s response
22 to AT&T, Attachment JSM-4. As AT&T’s letter explains, not only has Halo been
23 improperly avoiding access charges on large amounts of unauthorized landline traffic, but

⁵ Mr. Wiseman is correct, however, in stating (at page 26, lines 6-7) that AT&T did not “request that the TRA mandate a change to the factors.” AT&T did not request such a determination from the TRA simply because the factor, like the rest of the ICA, applies only to wireless traffic. AT&T’s complaint centers on the fact that Halo is sending landline traffic under this wireless ICA, and as such, the factors, like the ICA, don’t apply to this traffic anyway.

1 it also has been sending significantly more interMTA wireless traffic than it told AT&T it
2 would.

3 **Q. MR. WISEMAN STATES ON PAGE 33, LINES 1-2, THAT “AT&T HAS NOT**
4 **PROPOSED ANY CHANGE TO THE CURRENT NEGOTIATED FACTOR.” IS**
5 **THAT TRUE?**

6
7 No. As previously discussed, the factor is not “negotiated,” nor must there be “mutual
8 agreement” to change it from the initial default.

9 **Q. MR. WISEMAN STATES (AT 30) THAT HALO WILL STOP INSERTING**
10 **FALSE CN DATA AS OF DECEMBER 29, 2011. DOES THAT MAKE ANY**
11 **DIFFERENCE FOR THIS CASE?**

12
13 A. No. First of all, it is too little too late. AT&T initiated dispute resolution on this issue
14 under the ICA back in May 2011. Halo did nothing, refused to change its practices, and
15 continued knowingly violating the ICA. It does not make sense to me that a carrier could
16 knowingly breach an ICA for months on end, attempt to avoid any resolution of the issue
17 by various tactics, and then, when finally brought before a state commission, be allowed
18 to say “oh, never mind,” and finally change its practices to avoid liability. Moreover,
19 Halo makes no offer to compensate AT&T for all the access charges it has avoided by
20 inserting false CN data, so even changing its practices going forward would not make up
21 for its past breach of the ICA. And beyond that, Halo’s latest ploy (i) would not remedy
22 the problem of Halo sending unauthorized landline-originated traffic to AT&T, and (ii)
23 would not help AT&T anyway, since AT&T already changed the interMTA factor for
24 billing Halo in wireless traffic (as the ICA allows), yet Halo has refused to pay any of the
25 charges due under that new factor. AT&T has no doubt that even if it stopped inserting
26 false CN, Halo would still refuse to pay the applicable access charges on the traffic it

1 sends to AT&T. The only way to stop Halo's continuous, multiple breaches of the ICA is
2 to allow AT&T to cease providing service to Halo.

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

4 A. Yes.



Diana C. Durham
General Attorney
AT&T Wholesale

Docket No. 11-00119

Attachment JSM-3

Page 1 of 11

AT&T Services, Inc.
637 Kuehnle Street
Ann Arbor, MI 48103
734-994-0751 Telephone
847-513-0866 Fax
diana.durham@att.com

May 13, 2011

Via Electronic Delivery and U.S. Mail - Certified
wsmc@smccollough.com
wsmc@dotlaw.biz

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

twallace@halowireless.com

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107

Re: 251/252 Interconnection Agreement between Halo Wireless, Inc. and BellSouth Telecommunications, Inc., for the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee, executed by Halo on March 29, 2010; 251/252 Interconnection Agreement between Halo Wireless, Inc. and BellSouth Telecommunications, Inc., for the state of Louisiana, executed by Halo on May 4, 2010; AT&T's Demand That Halo Wireless, Inc. Immediately Cease and Desist from its Material Breaches of the Terms and Conditions of the 251/252 Interconnection Agreements that Exist Between AT&T and Halo Wireless, Inc. for the States listed above; AT&T Notice to Halo Wireless of Modified Local and Non-Local Traffic Percentages, Based on Actual Traffic, Pursuant to Sections VII. D and E of the Interconnection Agreements Referenced Above; and AT&T's Notice that it is Invoking Dispute Resolution, Pursuant to the Interconnection Agreements Referenced Above.

Dear Mr. McCollough and Mr. Wallace:

Introduction.

BellSouth Telecommunications, Inc., as the AT&T incumbent local exchange carrier ("AT&T") that is a party to both interconnection agreements referenced above (collectively, "ICAs" or "the parties' ICAs"), hereby demands that Halo Wireless, Inc. ("Halo" or "Halo Wireless") immediately cease and desist from its numerous material breaches of the terms and conditions of the parties' ICAs. Such material breaches include: 1) engaging in a scheme to avoid (or conspiring to avoid) payment of access charges that are lawfully owed to AT&T for the traffic that Halo is sending; and, 2) failing to pay facilities charges that Halo Wireless has incurred and owes to AT&T. More specifically, Halo's scheme to avoid access charges consists in: a) sending non-wireless traffic to AT&T in breach of the parties' ICAs' requirement that Halo's traffic consist of wireless traffic; and, b) manipulating originating Signaling System 7 ("SS7") data, so that the calling party number and/or the charging number are either altered or deleted for the calls sent by Halo to AT&T. Lastly, AT&T hereby provides Halo Wireless with notice that AT&T is modifying the Non-Local Traffic percentages of Sections VII.D and E of the parties' ICAs, based on actual traffic measurements by AT&T. Regarding

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 2.

AT&T's billing for facility charges, the 60 day time period for the parties to try to resolve the dispute, pursuant to Section VI.C.4, began on December 6, 2010, when Halo disputed AT&T's invoicing of the facility charges. Section VI.C.4 states:

"4. Billing disputes shall be handled pursuant to the terms of this section.

a. Each party agrees to notify the other party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to informally resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved party may pursue dispute resolution in accordance with the terms of this Agreement.

b. For purposes of this Section, a billing dispute means a dispute of (i) a specific amount of money actually billed by either party (ii) minutes of use (iii) facilities billed for (iv) methodology applied to calculations (v) delay in sending invoices or (vi) any other bona fide disagreement with compensation or an invoice. The dispute must be clearly explained by the disputing party and supported by written documentation, which clearly shows the basis for disputing charges. By way of example and not by limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other undisputed amounts owed by the billed party until the dispute is resolved. Claims by the billed party for damages of any kind will not be considered a billing dispute for purposes of this Section. Once the billing dispute is resolved, the disputing party will make immediate payment of any of the disputed amount owed to the billing party or the billing party shall have the right to pursue normal treatment procedures. Any credits due to the disputing party, pursuant to the billing dispute, will be applied to the disputing party's account by the billing party immediately upon resolution of the dispute."

Since the requirements of Section VI.C.4 have been met for the facility charges dispute and the dispute has not been resolved, AT&T hereby invokes Section XX., "Resolution of Disputes," to begin the 30 day period for the parties to attempt to resolve the facility charge dispute, as well as all other disputes identified herein. Section XX. provides:

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 3.

“XX. Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the appropriate company representatives. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute, or to the extent that the Commission does not have jurisdiction or declines to review the dispute, then the FCC. However, each party reserves the right to seek judicial or FCC review of any ruling made by the Commission concerning this Agreement.”

Please provide AT&T with the name(s) of the appropriate Halo representative(s), and dates and times when they are available, to discuss all of the issues identified herein with AT&T, in an attempt to resolve the disputes.

1. Halo Wireless Must Cease and Desist from Its Scheme to Avoid (or conspiring to avoid) the Payment of Access Charges for Traffic that is Lawfully Subject to Access Charges.

Halo is engaged in a scheme to avoid paying access charges to AT&T for traffic that is lawfully subject to access charges. Specifically, the scheme consists in Halo's aggregation of interexchange wireline-to-wireline traffic and other third-party traffic that Halo then routes, as if it were Halo-originated CMRS traffic. The scheme also includes the alteration of originating call party data. Such scheme is a material breach of the parties' ICAs, and AT&T hereby demands that Halo cease and desist from such scheme. Moreover, the unauthorized wireline traffic is subject to access charges per tariff, and AT&T therefore further demands that Halo pay AT&T \$688,988.66 in lawfully owed access charges incurred as of April 28, 2011, for the traffic that Halo has routed to AT&T for termination or transit to other carriers, pursuant to Halo's illegal scheme. The \$688,988.66 does not include amounts that rural LECs ("RLECs") may claim that AT&T owes them for traffic that AT&T has routed from Halo to the RLECs—AT&T will seek reimbursement from Halo for any such amounts that AT&T pays the RLECs.

a. Halo Wireless Must Cease and Desist from Sending AT&T Non-CMRS Traffic.

Halo Wireless is sending AT&T non-wireless traffic, *i.e.*, wireline-to-wireline traffic, in material breach of the parties' ICAs, which are for two-way CMRS traffic only. The following Whereas Clause, which the parties added through an amendment to each of the interconnection agreements when Halo adopted the ICAs, makes this clear:

“Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before Carrier delivers traffic to AT&T for termination by AT&T or for transit to another network.” (Emphasis added).

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 4.

The traffic that Halo is sending AT&T does not fall into either of these categories. The traffic sent by Halo is not AT&T-originated traffic and is not traffic transited through AT&T's network and routed to Halo for wireless termination; therefore, it does not fall within the first category specified in the Whereas Clause cited above. Nor is the traffic in question *originating* wireless traffic before Halo delivers it to AT&T for termination or for transit to another carrier, and, therefore, does not fall within the second category specified in the Whereas Clause cited above.

The ICAs, moreover, have additional language throughout that indicate that traffic sent pursuant to the ICAs must be CMRS traffic, *i.e.*, wireless-to-wireline or wireline-to-wireless traffic. For example, attachment B1 to the ICAs is entitled, "Local CMRS Interconnection Rates." (Emphasis added.) Also, Section VI.A. of the ICAs states:

"VI. Compensation and Billing

A. Compensation of Local Traffic

Each party will pay the other for terminating its Local Traffic on the other's network at the Local Interconnection rates as set forth in Attachment B-1. *These rates are reciprocal for mobile-to-land and land-to-mobile calls.*" (Emphasis added.)

Further, Section II, "Purpose," of the ICAs states:

II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution, including, without limitation, the Act at Sections 251, 252 and 271. *The access and interconnection obligations contained herein enable Carrier to provide CMRS in those areas where it is authorized to provide such services within the nine state region of BellSouth.* (Emphasis added.)

Accordingly, Halo Wireless is in violation of the parties' ICAs when it sends wireline-originated traffic to AT&T, because such traffic does not originate through wireless transmitting and receiving facilities, before Halo Wireless delivers the traffic to AT&T for termination.

b. Halo Wireless Must Cease and Desist from Altering and/or Deleting the True Originating Calling Party Number and/or the Charge Number of the Calls that it Sends to AT&T.

The failure of Halo Wireless to deliver the true Calling Party Number ("CPN") and/or Charge Party ("CP") number is another material breach of the parties' interconnection agreements and is in violation of state and federal laws. Charge Party (CP) numbers are associated with the originating end user, e.g., a PBX with a

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 5.

listed directory number and multiple station numbers working behind it. Halo is inserting a different CP into the signaling data stream, in violation of industry practices. Halo's practices breach Section XIV. G. of the parties' ICAs, which provides:

"G. The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly."

In addition, Halo's failure to provide accurate CPN and/or CN is in violation of the federal Truth in Caller Identification Act, which provides:

"In General - It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B)."

47 U.S.C. § 227(e)(1)

Further, current and proposed FCC rules prohibit Halo's practices. *See, e.g.*, 47 CFR 64.1601, and Rules and Regulations Implementing the Truth in Caller ID Act of 2009 (WC Docket No. 11-39; FCC 11-41; rel. March 9, 2011). Accordingly, Halo Wireless must immediately cease and desist from altering and/or deleting CPN and/or CN, provided via the SS7 network, and, going forward, Halo must transmit accurate CPN and CN for all calls that it delivers to AT&T.

2. Halo Wireless Must Pay AT&T for Facility Charges, Pursuant to the Parties' Interconnection Agreements.

As of April 28, 2011, Halo Wireless owes AT&T a total of \$818,602.94, for facility charges it has incurred, pursuant to Sections V.B and VI.B of the parties' interconnection agreements. Halo Wireless' failure to pay AT&T for the facility charges that it has incurred and that AT&T has invoiced is a material breach of the parties' interconnection agreements. AT&T hereby demands that Halo abide by its agreements and promptly pay the aggregate total of the facility charges incurred for the states where the parties are interconnected under the agreements, and that Halo Wireless pay, within 30 days as required by the parties' ICAs, all future facility charges that Halo incurs and that AT&T invoices. Sections V.B and VI.B of the parties' interconnection agreements provide as follows:

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 6

“V. Interconnection Trunk Group Options

B. Two-Way Trunk Group Arrangement

If the Parties mutually agree upon a two-way trunking arrangement, the following will apply: BellSouth and Carrier will share the cost of the two-way trunk group carrying both Parties traffic proportionally when purchased via this Agreement or the General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended from time to time. BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.”

...

“VI. Compensation and Billing

B. Compensation of Facilities

1. Where one-way trunking is used, each party will be solely responsible for the recurring and non-recurring cost of that facility up to the designated POI(s) on the terminating party's network.
2. The Parties agree to share proportionately in the recurring costs of two-way interconnection facilities.

a. To determine the amount of compensation due to Carrier for interconnection facilities with two-way trunking for the transport of Local Traffic originating on BellSouth's network and terminating on Carrier's network, Carrier will utilize the prior months undisputed Local Traffic usage billed by BellSouth and Carrier to develop the percent of BellSouth originated Local Traffic.

b. BellSouth will bill Carrier for the entire cost of the facility. Carrier will then apply the BellSouth originated percent against the Local Traffic portion of the two-way interconnection facility charges billed by BellSouth to Carrier. Carrier will invoice BellSouth on a monthly basis, this proportionate cost for the facilities utilized by BellSouth.”

In accordance with these provisions, Halo Wireless owes AT&T \$818,602.94 that Halo Wireless has incurred and that AT&T has invoiced for facility charges, as of April 28, 2011, and for all future facility charges that may be incurred by Halo and invoiced by AT&T, pursuant to these provisions.

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 7.

3. Halo Wireless Owes AT&T for Non-Local Wireless that it Sends to AT&T.

Pursuant to Section VII.A of the parties' ICAs, Halo Wireless also owes AT&T for Non-Local wireless traffic that Halo has sent or may send to AT&T in the future:

"VII. Non-Local Traffic Interconnection

A. For terminating its Non-Local Traffic on the other Party's network, each Party will pay either the access charges described in paragraph (B) hereunder or the Non-Local Intermediary Charges described in paragraph (D) hereunder, as appropriate."

Section VII. D. of the parties' ICAs provides AT&T with the right to use actual traffic measurements to bill Halo Wireless for the non-local wireless traffic that Halo has sent, and which it may send, to AT&T in the future. Section VII.D. states:

"D. Where technically possible to measure traffic for classifying traffic percentage's, the Parties shall utilize actual traffic measurements to classify traffic in each of the categories shown in subsection E. below. BellSouth may conduct periodic reviews of Carriers' traffic classification percentage's and shall update those percentages for the aforementioned traffic accordingly."

4. AT&T Notice to Halo Wireless of Modified Local and Non-Local Traffic Percentages, Based on Actual Traffic, Pursuant to Section VII.E of the Parties' ICAs.

As reflected in Halo's September 30, 2010 letter to AT&T (copy attached), Halo and AT&T "agreed to use a default InterMTA traffic percentage of 1% during the initial 3 month period in each state, after which the percentage will be changed to reflect the actual amount of InterMTA traffic, if any." AT&T hereby provides notice to Halo that AT&T is modifying the Non-Local Traffic percentages in the parties' ICAs, pursuant to Sections VII.D and E of the parties' ICAs. Section VII is quoted in its entirety below, and the percentages that AT&T is modifying, based on actual traffic measurements taken by AT&T, are highlighted in yellow, with the new percentages, by state, shown below the quoted text of Section VII, which states:

VII. Non-Local Traffic Interconnection

A. For terminating its Non-Local Traffic on the other Party's network, each Party will pay either the access charges described in paragraph (B) hereunder or the Non-Local Intermediary Charges described in paragraph (D) hereunder, as appropriate.

B. For originating and terminating intrastate or interstate interMTA Non-Local Traffic, each Party shall pay the other BellSouth's intrastate or interstate, as appropriate, switched network access service rate elements on a per minute

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 8.

of use basis, which are set out in BellSouth's Intrastate Access Services Tariff or BellSouth's Interstate Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement.

C. If Non-Local Traffic originated by Carrier is delivered by BellSouth for termination to the network of a third party telecommunications carrier that is uniquely identifiable ("Third Party Carrier"), then BST will bill Carrier and Carrier shall pay a \$.002 per minute intermediary charge for such Intermediary Traffic in addition to any charges that BST may be obligated to pay to the Third Party Carrier (collectively called "Third Party Termination Charges"). Third Party Termination Charges may change during the term of this Agreement, and the appropriate rate shall be the rate in effect when the traffic is terminated. The Parties agree the percentage of Non-Local Traffic delivered to BellSouth by Carrier shall be subject to Intermediary Charges and Third Party Termination Charges. BellSouth shall not deliver Intermediary Traffic to Carrier for termination to a Third Party Carrier, and therefore, Carrier shall not bill BellSouth any intermediary charges. Intermediary Traffic transiting BellSouth's network to Carrier is not Local Traffic and Carrier shall not bill BellSouth for Intermediary Traffic transiting BellSouth's network. In addition, Carrier shall not bill BellSouth for Traffic received by BellSouth from an interexchange carrier for delivery to Carrier.

D. Where technically possible to measure traffic for classifying traffic percentage's, the Parties shall utilize actual traffic measurements to classify traffic in each of the categories shown in subsection E. below. BellSouth may conduct periodic reviews of Carriers' traffic classification percentage's and shall update those percentages for the aforementioned traffic accordingly.

E. For Carrier's that have not exchanged traffic under a previous CMRS interconnection agreement with BellSouth or for traffic categories that are not technically feasible to measure, the associated default traffic classification percentages set forth in this subsection will be used until such time actual traffic patterns have been measured:

Carrier originated traffic to BellSouth
Local Traffic 60%
Non-Local InterMTA InterState Traffic .5%
Non-Local InterMTA IntraState Traffic- 5%
Non-Local Intermediary Only Traffic 31.2%
Non-Local Intermediary Plus Cost Traffic 7.8%
BellSouth originated traffic to Carrier
Local Traffic 99%

W. Scott McCollough
 Attorney at Law
 1250 South Capital of Texas Highway Bldg. 2-235
 West Lake Hills, Texas 78746

Todd Wallace
 CTO
 3437 W. 7th Street
 Box 127
 Fort Worth, TX 76107
 May 13, 2011
 Page 9.

Non-Local InterMTA InterState Traffic .5%
Non-Local InterMTA IntraState Traffic .5%

The modified Local and Non-Local Traffic percentages from the date of this letter and going forward will be as provided in the table below, for each state that is referenced:

VII. Carrier originated traffic to BellSouth					
AL	Non-Local InterMTA Interstate Traffic	71.8%	MS	Non-Local InterMTA Interstate Traffic	78.6%
	Non-Local InterMTA Intrastate Traffic	5.1%		Non-Local InterMTA Intrastate Traffic	3.3%
	Local Traffic	23.0%		Local Traffic	18.1%
FL	Non-Local InterMTA Interstate Traffic	21.3%	NC	Non-Local InterMTA Interstate Traffic	50.8%
	Non-Local InterMTA Intrastate Traffic	36.3%		Non-Local InterMTA Intrastate Traffic	0.2%
	Local Traffic	42.3%		Local Traffic	49.0%
GA	Non-Local InterMTA Interstate Traffic	68.1%	SC	Non-Local InterMTA Interstate Traffic	41.0%
	Non-Local InterMTA Intrastate Traffic	1.4%		Non-Local InterMTA Intrastate Traffic	0.9%
	Local Traffic	30.5%		Local Traffic	58.1%
KY	Non-Local InterMTA Interstate Traffic	66.0%	TN	Non-Local InterMTA Interstate Traffic	87.0%
	Non-Local InterMTA Intrastate Traffic	1.7%		Non-Local InterMTA Intrastate Traffic	4.3%
	Local Traffic	32.3%		Local Traffic	8.7%
LA	Non-Local InterMTA Interstate Traffic	16.2%			
	Non-Local InterMTA Intrastate Traffic	11.4%			
	Local Traffic	72.4%			

W. Scott McCollough
Attorney at Law
1250 South Capital of Texas Highway Bldg. 2-235
West Lake Hills, Texas 78746

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
May 13, 2011
Page 10.

5. Conclusion.

In conclusion, AT&T hereby demands that Halo Wireless (1) pay AT&T \$688,988.66 in access charges that it owes for all traffic subject to access charges that Halo has sent to AT&T through April 28, 2011, and that it may send in the future, including, but not limited to, wireline-to-wireline traffic and non-local wireless traffic; (2) immediately cease and desist from sending to AT&T, in breach of the parties' interconnection agreements, non-CMRS traffic, i.e., wireline traffic, and traffic for which CPN and/or CN has been altered or deleted; and, (3) pay AT&T \$818,602.94 for facility charges that it has incurred up to April 28, 2011, and any additional amounts that become due and payable for facility charges in the future. Finally, this letter provides Halo Wireless with notice of the modified percentages for Local and Non-Local Traffic, based on actual traffic measurements taken by AT&T, pursuant to Sections VII.D and E of the parties' ICAs.

Very truly yours,



Diana C. Durham

Attachment

HALO WIRELESS, INC.
3437 W. 7TH Street, #127
Fort Worth, Texas 76107
817-338-3708 fax 817-338-3777

September 30, 2010

Mr. Randy Ham
Lead Negotiator
AT&T
600 North 19th Street – 8th Floor
Birmingham, AL 35203

Subject: InterMTA Rates for Halo Wireless, Inc. Interconnection Agreements (ICAs)

Mr. Ham:

I am following up on the email exchange between you and Russ Wiseman from today where you discussed the applicable InterMTA traffic factors in Halo Wireless' ICAs.

As background, nearly all of the ICAs between AT&T and Halo Wireless specify a default InterMTA traffic percentage that AT&T will apply to Halo traffic prior to Halo Wireless establishing actual traffic patterns with AT&T. With the exception of the ICA for the state of Illinois, which does not mention an InterMTA traffic factor, these current default traffic percentages range from 0% for the ICAs in MO and CA, up to 12% for the state of OH.

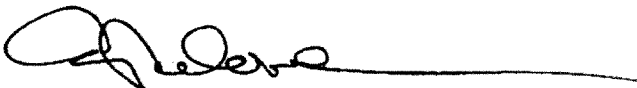
I understand that Mr. Wiseman has informed you that Halo Wireless has made alternate arrangements for the termination of InterMTA traffic, and as such, does not anticipate terminating InterMTA traffic with AT&T. In light of these arrangements, I understand that AT&T has agreed to use a default InterMTA traffic percentage of 1% during the initial 3 month period in each state, after which the percentage will be changed to reflect the actual amount of InterMTA traffic, if any. Our understanding is that this 1% traffic factor will apply to all AT&T states where Halo Wireless has an ICA with AT&T, except in states where the current default InterMTA traffic percentage is less than 1%, which is the case in NV (0.6%), and as previously mentioned, CA, IL and MO, which do not have a default percentage, and where actual InterMTA traffic presumably applies.

Furthermore, our understanding is that these new default InterMTA percentages will take effect immediately, and will be reflected in future invoices. We understand that this new traffic factors will not be applied retroactively to invoices already received by us.

If you believe any of the above to be incorrect or inaccurate, we would appreciate it if you would kindly correct our understanding.

We appreciate AT&T's flexibility on these traffic factors, and thank you for your attention to this matter.

Sincerely,



Carolyn Malone
Secretary/Treasurer

HALO WIRELESS, INC.
3437 W. 7TH Street, #127
Fort Worth, Texas 76107
817-338-3708 fax 817-338-3777

September 30, 2010

Mr. Randy Ham
Lead Negotiator
AT&T
600 North 19th Street – 8th Floor
Birmingham, AL 35203

Subject: InterMTA Rates for Halo Wireless, Inc. Interconnection Agreements (ICAs)

Mr. Ham:

I am following up on the email exchange between you and Russ Wiseman from today where you discussed the applicable InterMTA traffic factors in Halo Wireless' ICAs.

As background, nearly all of the ICAs between AT&T and Halo Wireless specify a default InterMTA traffic percentage that AT&T will apply to Halo traffic prior to Halo Wireless establishing actual traffic patterns with AT&T. With the exception of the ICA for the state of Illinois, which does not mention an InterMTA traffic factor, these current default traffic percentages range from 0% for the ICAs in MO and CA, up to 12% for the state of OH.

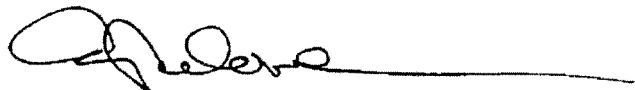
I understand that Mr. Wiseman has informed you that Halo Wireless has made alternate arrangements for the termination of InterMTA traffic, and as such, does not anticipate terminating InterMTA traffic with AT&T. In light of these arrangements, I understand that AT&T has agreed to use a default InterMTA traffic percentage of 1% during the initial 3 month period in each state, after which the percentage will be changed to reflect the actual amount of InterMTA traffic, if any. Our understanding is that this 1% traffic factor will apply to all AT&T states where Halo Wireless has an ICA with AT&T, except in states where the current default InterMTA traffic percentage is less than 1%, which is the case in NV (0.6%), and as previously mentioned, CA, IL and MO, which do not have a default percentage, and where actual InterMTA traffic presumably applies.

Furthermore, our understanding is that these new default InterMTA percentages will take effect immediately, and will be reflected in future invoices. We understand that this new traffic factors will not be applied retroactively to invoices already received by us.

If you believe any of the above to be incorrect or inaccurate, we would appreciate it if you would kindly correct our understanding.

We appreciate AT&T's flexibility on these traffic factors, and thank you for your attention to this matter.

Sincerely,



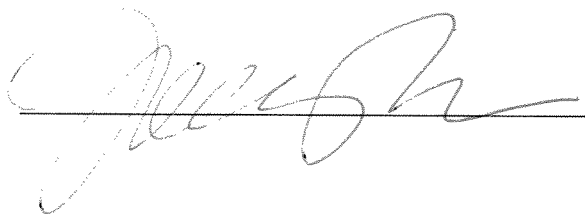
Carolyn Malone
Secretary/Treasurer

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
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Paul Davidson, Esquire
Waller, Lansden, et al.
511 Union St., Suite 2700
Nashville, TN 37291
paul.davidson@wallerlaw.com
james.weaver@wallerlaw.com
vkrajca@mcsllaw.com

A handwritten signature in dark ink, appearing to read "Paul Davidson", is written over a horizontal line.