

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:	:	
COMPLAINT OF	:	
BELLSOUTH TELECOMMUNICATIONS	:	DOCKET NO.: 11-00119
LLC D/B/A AT&T TENNESSEE	:	
V.	:	
HALO WIRELESS, INC.	:	

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

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the *Pre-Filed Rebuttal Testimony of Russ Wiseman On Behalf of Halo Wireless, Inc. and Pre-Filed Rebuttal Testimony of Robert Johnson on Behalf of Halo Wireless, Inc.* was served via e-mail and certified mail, return receipt requested, on the following counsel of record on this the 3<sup>rd</sup> day of January, 2012:

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WIRELESS, INC.**

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

A: My name is Russ Wiseman. I am Chief Operating Officer for Halo Wireless, Inc. (“Halo”).

**Q: On whose behalf are you appearing?**

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

**Q: Are you the same Russ Wiseman that presented Direct Testimony?**

A: Yes.

**Q: What is the purpose of this Rebuttal Testimony?**

A: I will respond to the testimony of AT&T's proffered Direct Testimony by Messrs McPhee and Neinast.

**Q: Will you specifically “rebut” everything in the AT&T witnesses’ testimony that you take issue with?**

A: No. Many of the things they say were already and sufficiently addressed in my Direct. In order to conserve time and paper I will not repeat what I've already said. My silence in this Rebuttal testimony on a claim or argument the AT&T witnesses make should not be interpreted as assent, concurrence, agreement or admission. To the contrary.

1 **Q: To the extent you respond to specific testimony by the two AT&T Witnesses are you**  
2 **agreeing the testimony is relevant and admissible?**

3 A: No. My Rebuttal is presented in case the TRA decides to receive and consider the AT&T  
4 Direct to which I respond.

5 **“WIRELESS” ISSUE**

6 **Q: What is your response to the AT&T Direct on the “wireless” issue?**

7 A: With regard to the “wireless origination” issue, AT&T’s two witnesses each base all of  
8 their opinions, conclusions and ultimate positions on one express assumption and another  
9 implicit assumption. They also exhibit surprising ignorance – which I can only assume is feigned  
10 – about how ESPs have always obtained their connections to the PSTN in order to originate and  
11 terminate communications where one, the other or both edge devices were on the PSTN.

12 **Q: What is the express assumption?**

13 A: They both expressly focus entirely on the “telephone number” that appears in the SS7-  
14 related CPN or CN address signal as the sole basis for a series of conclusions regarding “where”  
15 a call “actually” originated, which “carrier” serves the initial calling party and whether the call is  
16 “landline” or “wireless.”

17 **Q: Is this a valid or reasonable assumption?**

18 A: No. Both AT&T witnesses assert that the assumption is reasonable, but they do not  
19 seriously examine whether the “number” can serve or support such talismanic reliance. This is  
20 nothing but a deeming exercise. The fact is that numbers are not and cannot be the basis for or  
21 support the assumptions and conclusions the AT&T witnesses reach. Telephone numbers are not  
22 a reasonable or reliable proxy for location, carrier, network or type in today’s world. Indeed, this

1 has been the case for quite some time – ever since ESPs and wireless mobility began to  
2 proliferate.

3 **Q: What is the implicit assumption?**

4 A: Both AT&T witnesses necessarily assume that Halo’s customer is something other than a  
5 communications intensive business end user and as such an end-point where calls originate and  
6 terminate. Neither McPhee nor Neinast consider the possibility that Transcom is an end user, and  
7 what the implications such a distinction would have on their characterizations and conclusions,  
8 which are entirely based on the proposition that Transcom is or must be a telecommunications  
9 carrier rather than an end user.

10 The closest they come to confronting this issue is when they characterize Halo as  
11 providing “transit.”<sup>1</sup> When “carrier A” is providing “transit” it is between two other carriers –  
12 “carrier B” and “carrier C.” When an exchange carrier<sup>2</sup> (“carrier A”) is switching a call between  
13 an **end user** and another carrier the exchange carrier is not providing “transit.” Rather, the  
14 exchange carrier is providing interconnected “telephone exchange service” or “exchange access”  
15 to the end user, and is between the end user and “carrier C.” By asserting Halo is providing a  
16 transit service, AT&T is necessarily saying Transcom is not an end user, and is instead a “carrier  
17 B.” Mr. Neinast also effectively denies Transcom’s end user status when he says that Halo has  
18 no “end user customers.”<sup>3</sup> Finally, Mr. Neinast seems to be contending that Transcom is a carrier  
19 rather than an end user when he asserts on page 3 that “these calls have been handed off to Halo  
20 *from another carrier* as opposed to being placed by retail *end users* who buy service directly  
21 from Halo.” (emphasis added).

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<sup>1</sup> Neinast Direct pp. 13-14.

<sup>2</sup> Halo is an “exchange carrier” even though it is not an LEC. That is why Halo is able to secure numbering resources from NANPA.

<sup>3</sup> Neinast Direct pp. 3, 16.

1 **Q: Do the AT&T witnesses ever address the fact that Transcom is an ESP and end**  
2 **user?**

3 A: No. Nor do they ever explain their basis for their unsupported and largely implied  
4 assertion that Transcom is not an end user and is instead a carrier.

5 The AT&T witnesses never address Halo's argument that the calls in issue do come from  
6 a communications intensive business end user customer in the MTA. (Note they do effectively  
7 admit,<sup>4</sup> or do not contest,<sup>5</sup> that Halo and Transcom do connect wirelessly in the MTA.) They do  
8 not engage in any analysis by comparing the situation to an exchange carrier providing telephone  
9 exchange service to a PBX that can operate in "leaky" mode – with calls that come in from  
10 elsewhere and are then "re-originated" over a local connection." This "omission" is notable  
11 because this is exactly how ESPs have operated from the beginning: as end users purchasing  
12 telephone exchange service and using the "leaky PBX" model. Transcom witness Johnson will  
13 explain, for example, that long before there was a "public Internet" "Value Added Networks"  
14 like Telenet operated packet-based networks with leaky PBXs that allowed users to make a  
15 "local" call to access the network and then traverse the network to a distant location and then  
16 secure dial tone to dial out, again on a local basis.

17 McPhee and Neinast should be aware that Transcom is an ESP and as such entitled to  
18 secure local connections from exchange carriers as an end user. After all, AT&T litigated this  
19 very issue against Transcom and lost. At the very least, they should discuss what the implications  
20 would be on their characterizations and conclusions regarding Halo assuming this were true.  
21 They do not, I can only reason, because they know it would turn their conclusions upside down.  
22 Ultimately, both witnesses fixate entirely on what happens before Transcom receives a call for

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<sup>4</sup> Neinast Direct pp. 13-14).

<sup>5</sup> The McPhee Direct does not challenge that there is a wireless connection between Halo and Transcom. He therefore does not contest the claim.

1 processing. They skip over the fact that the bankruptcy court ruled over AT&T's objection that  
2 Transcom changes the content and adds enhancement before Transcom then uses telephone  
3 exchange service (such as the telephone exchange service it purchases from Halo) to originate  
4 (or re-originate) the call in the MTA using its wireless CPE.

5 Our position throughout these proceedings, supported by relevant judicial decisions, is  
6 that Transcom is buying telecommunications from Halo so that Transcom can originate and  
7 terminate calls after it incorporates its enhanced/information functions into the  
8 telecommunications, thus "contaminating" the telecommunications and producing an  
9 enhanced/information service rather than a telecommunications service. This is how ESPs have  
10 always operated. The AT&T witnesses' failure to address the fact (or even *mention* our position  
11 even if they don't agree with it) that Transcom is an ESP, their lack of consideration of the  
12 possibility that Halo is selling a wireless telephone exchange service to a non-carrier end user in  
13 each of the MTAs in Tennessee is curious at best, is intellectually dishonest, and most definitely  
14 not helpful in bringing swift resolution to AT&T's claims. Their approach is nothing but an *ipse*  
15 *dixit* and completely useless to the TRA, in my opinion.

#### 16 **PURPOSE OF THE AMENDMENT**

17 **Q: Both AT&T witnesses present testimony regarding the purpose, meaning and intent**  
18 **of the "whereas" amendment to the adopted ICA. Do you have a response?**

19 A: Yes. First, I find it curious that Mr. McPhee<sup>6</sup> and Mr. Neinast<sup>7</sup> feel like they can explain  
20 "why AT&T wanted" this amendatory language. This provision was negotiated as part of a  
21 settlement of a case Halo filed at the FCC when AT&T refused to make the agreement available  
22 for adoption. Neither McPhee nor Neinast seem to be aware of this fact, but that is probably

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<sup>6</sup> McPhee Direct pp. 5-6.

<sup>7</sup> Neinast Direct pp. 5-6.



1 because they were not involved at the time. The AT&T negotiator was Randy Ham. Mr. Ham's  
2 stated concern was that Halo might not have any wireless equipment at all, or might not connect  
3 to its customers on a wireless basis. The amendment was put in place to assure AT&T that Halo  
4 would in fact connect to its end users on a wireless basis.

5 **Q: Did Halo disclose to AT&T that it would be serving business end users?**

6 A: Yes.

7 **Q: Did Halo disclose to AT&T that it would be serving ESPs?**

8 A: Yes, in a letter dated May 22, 2009 Halo discussed how Halo could be a "numbering  
9 partner" for VoIP providers, which is a fair characterization of the role Halo is – among other  
10 things – performing with regard to Transcom. AT&T admitted in a letter dated May 4, 2009 that  
11 CMRS providers can serve this role and that this ICA could be used to do so. Halo described in a  
12 July 10, 2009 letter that its product could be used to connect to private IP networks, which is,  
13 again, a fair way to describe what is happening here. AT&T did not indicate at the time, orally or  
14 in writing, that the language being negotiated for the amendment would prohibit these offerings.

15 If AT&T had some secret purpose behind the language other than to solve its stated  
16 concerns that there would be no wireless connections at all, they never communicated this intent  
17 to Halo. They most certainly never told Halo that these words would ban the services Halo was  
18 saying it wanted to provide. The words were put together solely to assuage AT&T's expressly  
19 stated worry that there would not in fact be any radios. Mr. McPhee and Mr. Neinast are either  
20 speculating (and wrong) or they are trying to re-write history and mislead the TRA on the true  
21 facts surrounding this amendment.

**1 TELEPHONE NUMBERS ARE UNRELIABLE PROXIES FOR LOCATION,**  
**2 ORIGINATING CARRIER, ORIGINATING NETWORK AND TPYE OF NETWORK.**

**3 Q: Mr. Neinast says an AT&T “study” found that slightly less than 75% of Halo’s**  
**4 traffic is “landline” originated. Do you have any comment?**

**5 A:** Yes. We have not seen the “study” but from the description of the “method” on pages 8-  
**6 11** it appears they merely looked at the telephone number in the CPN address signal, then looked  
**7** to see what carrier has that number and the rate center association of the NXX. If the number is  
**8** held by a “LEC” then Neinast concludes the call is “landline” and originated from a regular  
**9** telephone on the PSTN. If that is in fact his logical sequence I very much challenge the  
**10** conclusion.

**11 Q: Please explain.**

**12 A:** Well, let’s just take the first “landline” number Mr. Neinast lists on his Attachment MN-  
**13 3.** He lists 530-315-XXXX. MetroPCS has the entire 530-315 NXX. This is a “cellular” block. It  
**14** is rate centered in Marysville California. Neinast did not give the line number so we do not know  
**15** if the specific number has been ported to an LEC. I am not sure anyone can say the call  
**16** originated from a “landline” based on the information he provided. Nor can we just accept on  
**17** faith that the call started on any given carrier network or the call initiator was in California at the  
**18** time.

**19** The second “landline” number is 719-924-XXXX. This is also a “cellular” block. The  
**20** code administrator is Sprint/Nextel. It is rate centered to Pueblo-Main Colorado. There are  
**21** multiple carriers with thousands blocks:

NPA- NXX-X	Rate Center	Region	Switch	OCN	LATA
<a href="#">719-924</a>	<a href="#">Pueblo- Main</a>	<a href="#">CO</a>	<a href="#">CLSPCOMAX7X</a>	<a href="#">6232 NEXTEL COMMUNICATIONS</a>	<a href="#">658</a>
<a href="#">719-924-0</a>	<a href="#">Pueblo- Main</a>	<a href="#">CO</a>		<a href="#">6232 NEXTEL COMMUNICATIONS</a>	<a href="#">658</a>

NPA-NXX-X	Rate Center	Region	Switch	OCN	LATA
<a href="#">719-924-1</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">2490 CBeyond COMMUNICATIONS, LLC-CO</a>	<a href="#">658</a>
<a href="#">719-924-2</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">6567 CELLCO PARTNERSHIP DBA VERIZON WIRELESS - CO</a>	<a href="#">658</a>
<a href="#">719-924-3</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">6567 CELLCO PARTNERSHIP DBA VERIZON WIRELESS - CO</a>	<a href="#">658</a>
<a href="#">719-924-4</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">6567 CELLCO PARTNERSHIP DBA VERIZON WIRELESS - CO</a>	<a href="#">658</a>
<a href="#">719-924-5</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">078F BANDWIDTH.COM CLEC, LLC - CO</a>	<a href="#">658</a>
<a href="#">719-924-6</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">6232 NEXTEL COMMUNICATIONS</a>	<a href="#">658</a>
<a href="#">719-924-7</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">6232 NEXTEL COMMUNICATIONS</a>	<a href="#">658</a>
<a href="#">719-924-8</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">320A COMCAST PHONE OF COLORADO, LLC - CO</a>	<a href="#">658</a>
<a href="#">719-924-9</a>	<a href="#">Pueblo-Main</a>	<a href="#">CO</a>		<a href="#">320A COMCAST PHONE OF COLORADO, LLC - CO</a>	<a href="#">658</a>

1   **Q:     I see Comcast Phone on the list. Would that suggest to you the call might have been**  
2   **IP-originated?**

3   A:     Yes. If Mr. Neinast would share the specific number we would know which carrier has  
4   the specific number. But if the call was associated with a number in the 719-924-8xxx or 719-  
5   924-9xxx block and came from a user on the Comcast cable network, using their IP-based  
6   offering, I would say Mr. Neinast's assertion this was "landline" is wrong.

7   **Q:     I also see Bandwidth.com on the list. Didn't you mention them in your direct?**

8   A:     I did. If the call came from a number in the 719-924-5xxx thousands block it is entirely  
9   possible, and probably likely, that this was an IP-originated call, perhaps using Skype or  
10   GoogleVoice. It could well have started on a smart phone. Again, that would not be "landline."  
11   Further, if this number is being used with a product like Skype or GoogleVoice it is highly likely  
12   that the call did not touch Bandwidth.com's network in any way because the user was connecting  
13   to the Skype or GoogleVoice network using the Internet. The call cannot be said to have  
14   "originated" with Bandwidth.com at all. Yet, using the logic Neinast applies to Halo, I assume

1 that he would assert that such a call is “wireline” originating on Bandwidth.com’s network  
2 because a Bandwidth.com telephone number appears in the CPN parameter.

3 **Q: What about the 713-574 number on the table?**

4 A: Our search indicates that Level 3 is the code holder for this NPA-NXX. They have all of  
5 the thousands blocks except for the 0xxx thousand block, which our search indicates is held by  
6 AT&T Wireless.

7 **Q: You discussed Level 3 in you Direct as well, didn’t you?**

8 A: Yes. They are a numbering partner for many VoIP providers. Mr. Neinast would assume  
9 that a call originated on Level 3’s network merely because a Level 3 number was presented in  
10 the CPN parameter. But without more information, this is simply not a valid assumption.

11 **Q: Does Mr. Neinast’s table “prove” that any calls whatsoever actually started on a**  
12 **traditional analog phone served by an ILEC?**

13 A: Absolutely not. Indeed, as shown above, even his own examples show plenty of possible  
14 examples where the calls might not have started “wireline” or on a LEC’s network.

15 **Q: Has Transcom indicated whether any of its traffic was initiated using IP equipment?**

16 A: Well, from a Halo perspective all of Transcom’s traffic is IP-originated because  
17 Transcom is an end user and originates calls to Halo using IP-based wireless CPE. But Transcom  
18 has advised Halo that it has customers that certify to Transcom that their traffic is IP originated.  
19 For the 2011 calendar year more than 50% of Transcom's traffic was IP certified. Further a  
20 substantial portion of non IP certified traffic was probably IP originated as well, but simply was  
21 not delivered over IP certified arrangements.

22 **Q: So what does that tell you about Mr. Neinast’s alleged 75% “landline” originated?**

1 A: It tells me he is way wrong. At least 50% of his claimed 75% is off the table because it is  
2 really IP. But in our view his 75% is completely baseless anyway because it rests on unreliable  
3 and untenable assumptions.

4 **OTHER “NUMBER” ISSUES – EXHIBITS**

5 **Q. Can you identify Attachment RW (Rebuttal) - 1?**

6 A. It is a combination of reports generated from a national numbering database I requested  
7 from my team on September 24, 2011. It shows the reported ownership, routing information,  
8 number type, and other identifying information for Telephone Number 210-646-1457.

9 **Q. Where was the information contained in the reports retrieved from?**

10 A. I requested an inquiry be made regarding the ownership, routing information, number  
11 type, and other identifying information for Telephone Number 210-646-1457 from the  
12 application located at the Neustar Port PS website located on the bottom of each page of  
13 Attachment RW (Rebuttal) - 1. Neustar Port PS is a web-based application that offers real-time  
14 secured access to industry telephone number (TN) data derived directly from the North  
15 American Numbering Plan Administration (NANPA), the U.S. Number Portability  
16 Administration Centers (NPACs) and the Pooling Administration. The application offers reports,  
17 like those comprising Attachment RW (Rebuttal) - 1, that show TN ownership, routing  
18 information, number type, and other identifying information given pooling and porting activities.

19 **Q. How was the information contained in Attachment RW (Rebuttal) - 1 retrieved**  
20 **from the Neustar Port PS website?**

21 A. The Neustar Port PS application was accessed by first logging in via the internet on a PC.  
22 Once logged in, telephone number 210-646-1457 was input into the single TN query field, the

1 query was submitted, and the application generated the reports comprising Attachment RW  
2 (Rebuttal) - 1. Once generated, the reports were printed out.

3 **Q. Is Attachment RW (Rebuttal) - 1 a true and correct copy of the reports generated**  
4 **for Telephone Number 210-646-1457 under your direction and control?**

5 A. Yes.

6 **Q. Can you identify Attachment RW (Rebuttal) - 2?**

7 A. It is a combination of reports generated from a national numbering database I requested  
8 from my team on September 24, 2011. It shows the reported ownership, routing information,  
9 number type, and other identifying information for Telephone Number 512-633-3498.

10 **Q. Was Attachment RW (Rebuttal) - 2 generated under your direction?**

11 A. Yes.

12 **Q. Where was the information contained in the reports retrieved from?**

13 A. I requested an inquiry regarding the ownership, routing information, number type, and  
14 other identifying information for Telephone Number 512-633-3498 from the application located  
15 at the Neustar Port PS website located on the bottom of each page of Attachment RW (Rebuttal)  
16 - 2.

17 **Q. How was the information contained in Attachment RW (Rebuttal) - 2 retrieved**  
18 **from the Neustar Port PS website?**

19 A. The Neustar Port PS application was accessed by first logging in via the internet on a PC.  
20 Once logged in, telephone number 512-633-3498 was input into the single TN query field, the  
21 query was submitted, and the application generated the reports comprising Attachment RW  
22 (Rebuttal) - 2. Once generated, the reports were printed out.

1 **Q. Is Attachment RW (Rebuttal) - 2 a true and correct copy of the reports generated**  
2 **for Telephone Number 512-633-3498 under your direction and control?**

3 A. Yes.

4 **Q. Can you identify Attachment RW (Rebuttal) - 3?**

5 A. It is a combination of reports generated from a national numbering database I requested  
6 from my team on September 24, 2011. It shows the reported ownership, routing information,  
7 number type, and other identifying information for Telephone Number 830-522-4656.

8 **Q. Was Attachment RW (Rebuttal) - 3 generated under your direction?**

9 A. Yes.

10 **Q. Where was the information contained in the reports retrieved from?**

11 A. I requested an inquiry to be made regarding the ownership, routing information, number  
12 type, and other identifying information for Telephone Number 830-522-4656 from the  
13 application located at the Neustar Port PS website located on the bottom of each page of  
14 Attachment RW (Rebuttal) - 3.

15 **Q. How was the information contained in Attachment RW (Rebuttal) - 3 retrieved**  
16 **from the Neustar Port PS website?**

17 A. The Neustar Port PS application was accessed by first logging in via the internet on a PC.  
18 Once logged in, telephone number 830-522-4656 was input into the single TN query field, the  
19 query was submitted, and the application generated the reports comprising Attachment RW  
20 (Rebuttal) - 3. Once generated, the reports were printed out.

21 **Q. Is Attachment RW (Rebuttal) - 3 a true and correct copy of the reports generated**  
22 **for Telephone Number 830-522-4656 under your direction?**

23 A. Yes.

1 **SIGNALING ISSUE**

2 **Q: AT&T witness Neinast (pages 14-17) accuses Halo of “manipulating” charge**  
3 **number “to disguise the nature of traffic sent to AT&T.” McPhee (page 10) claims Halo is**  
4 **sending “inaccurate call detail information.” How do you respond?**

5 A: I extensively addressed this topic in my Direct. My testimony above relating to the  
6 AT&T witnesses’ failure to look at the situation from the perspective of an exchange carrier  
7 providing telephone exchange access service to a communications intensive business user very  
8 much applies here as well.

9 **Q: McPhee’s testimony is shorter and mostly relies on Mr. Neinast’s testimony. Is there**  
10 **anything in particular about McPhee’s testimony you wish to specifically rebut?**

11 A: Yes. Mr. McPhee refers to the signaling issue as pertaining to “call detail” information.  
12 Mr. Neinast on occasion uses similar words when he refers to “call data” or the “call record” and  
13 he actually uses the same verbiage on page 17.

14 I don’t think this is a “call detail” issue. “Call detail” is information contained in switch  
15 recordings. While call detail does often contain information pulled from signaling by the switch  
16 and then recorded in a call detail record (“CDR”), the assertion by AT&T’s witnesses that Halo  
17 is providing “inaccurate ‘call detail information’” is confusing. Halo is not sending “call detail”  
18 to AT&T. Halo is signaling Transcom’s MTA-specific Billing Telephone Number (“BTN”) to  
19 AT&T in the address signal portion of the SS7 ISDN User Part (“ISUP”) Initial Address  
20 Message (“IAM”) Charge Number parameter.

21 The question is whether Halo’s practice of signaling Transcom’s LATA-specific Billing  
22 Telephone Number in the Charge Number address signal for SS7 ISUP IAM is inappropriate  
23 under the ICA. As I observed in my Direct, the answer should be largely guided by industry



1 practices and standards, and once you understand that Halo's practice was based on the premise  
2 that Halo is providing telephone exchange service to a communications intensive business end  
3 user, much like how AT&T itself operates when it provides ISDN PRI service to a large business  
4 with an ISDN PBX, then it is clear that Halo's practice is perfectly appropriate.

5 **Q: Since McPhee mostly relies on Neinast, let's turn to that testimony. What is your**  
6 **first comment regarding Neinast's assertions?**

7 A: The first thing I want to do is correct a factual misstatement by Mr. Neinast. On page 16  
8 Mr. Neinast erroneously claims that "Halo is inserting a CN that is actually a Halo-owned test  
9 line, and not a line belonging to any end user." This is flatly incorrect. Halo does actually assign  
10 a number to Transcom in every LATA where Halo offers service and Transcom purchases  
11 service. This is used as the BTN for that LATA. Halo reports this assignment in its NRUF  
12 reports.

13 **Q: When you say that Halo has assigned a number to Transcom in each LATA, are you**  
14 **using the word "assigned" in any particular sense?**

15 A: Yes. I am specifically using the term "assigned" using the FCC's definition in 47 C.F.R.  
16 § 52.15(f)(iii): the numbers assigned to Transcom "... are numbers working in the Public  
17 Switched Telephone Network under an agreement such as a contract or tariff at the request of  
18 specific end users or customers for their use ..." That is why they are reported as such in the  
19 NRUFs. If a person dials, for example, 865-321-1901 – which is the number Neinast says AT&T  
20 receives in the CN address signal in "a single MTA" on Attachment MN-3 – the call will go  
21 through to Transcom's CPE. It is a "working number:" this number, along with each other  
22 Transcom BTN in each LATA, was activated and has been assigned to Transcom.

1 **Q: So Neinast’s assertion that this is a “Halo-owned test line and not a line belonging to**  
2 **any end user” is incorrect?**

3 A: Absolutely. That is Transcom’s phone number, assigned by Halo. When a call comes in  
4 Halo terminates it to Transcom, which answers the call and does whatever Transcom has decided  
5 to do with incoming calls. If this were a “Halo-owned test line” Halo would be reporting it as an  
6 “administrative number” using the definition in 47 C.F.R. § 52.15(f)(i). Further, our NRUF  
7 reporting of these numbers as “assigned” is also relevant to the “end user” question. “Assigned”  
8 numbers are those supplied to end users. If Transcom was a carrier, then Halo would be required  
9 to report the numbers as “intermediate numbers” as defined in § 52.15(f)(v).<sup>8</sup>

10 **Q: Mr. Neinast testifies regarding “CN and how it works with CPN” on pages 15-16.**  
11 **Do you agree with his testimony on this point?**

12 A: He is mostly right on how CN and CPN interrelate. He is wrong, however, when he  
13 testifies on pages 16-17 that Halo is not following the industry practice.

14 **Q: Where do you agree with Mr. Neinast?**

15 A: I agree with his statement on page 15 that it is appropriate to signal a CN to identify “the  
16 financially responsible party.” I also agree that the CN can be the “master billing number” (I use  
17 “billing telephone number” or “BTN” but we are talking about the same thing). I also agree that  
18 the most common use of CN is for businesses with PBXs. To the extent that Neinast implies that  
19 CN is useful only for “long distance” billing by IXC’s, or that it is only useable as a billing  
20 substitute for DID’s within the same thousands block, however, we part company.<sup>9</sup> While those

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<sup>8</sup> “(v) Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer’s service to another service provider shall not be classified as intermediate numbers.”

<sup>9</sup> Neinast probably did not do much checking within his organization to see AT&T has a policy of only populating CN with a LERG-active geographic NANP number within the same thousands block as all of the DID’s behind a

1 are specific examples of why there is a CN parameter separate from the CPN, they are not the  
2 only permissible ones.

3 **Q: Who is the “financially responsible party” for the service you provide to Transcom?**

4 A: Transcom.

5 **Q: Who is the “financially responsible party” for the calls Transcom originates in the**  
6 **MTA using its wireless equipment?**

7 A: Transcom.

8 **Q: What “number will be charged for the call” (see Neinast Direct p. 16, line 6)?**

9 A: The applicable Transcom BTN for a particular LATA within an MTA – the number we  
10 are signaling in the CN address signal.

11 **Q: If all the calls Neinast analyzed were Transcom originated calls would that explain**  
12 **why AT&T sees the same CN in each call within a LATA?**

13 A: Yes. I do need to state that Mr. Neinast’s discussion is imprecise. AT&T does not see the  
14 same CN for all calls in every MTA and LATA in Tennessee. There is a different CN for each  
15 LATA. In each instance that is a BTN assigned to Transcom for that LATA.

16 **Q: When Halo includes the Transcom BTNs in the CN address signal for Transcom**  
17 **calls processed by Halo, was Halo acting consistent with industry standards?**

18 A: Yes. The practice comported with ANSI T1.113, which describes the CN parameter  
19 Charge Number as “[i]nformation sent in either direction indicating the chargeable number for  
20 the call and consisting of the odd/even indicator, nature of address indicator, numbering plan  
21 indicator, and address signals.” (emphasis added)

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PBX. Halo has reason to believe AT&T sometimes populates CN with a pseudo-number or a private numbering plan number. In other words, even AT&T does not only use “the lead number for a specific range of numbers” contrary to Neinast’s assertion on page 17.

1 **Q: Are the Transcom BTNs the “chargeable numbers” for calls originated by**  
2 **Transcom?**

3 A: Yes. Transcom is Halo’s end user customer. That BTN will be and is charged for calls  
4 within each LATA-MTA combination.

5 **Q: Is Halo signaling the Transcom BTN in the CN address signal to “disguise the**  
6 **nature of the call”?**

7 A: No. Halo is signaling the Transcom BTN in the CN address signal because Transcom is  
8 the financially responsible party. Furthermore, Halo is passing CPN information unaltered. Thus,  
9 our signaling information provides all the information needed to determine the nature of the  
10 traffic to the extent address signal information is even useful to discern “nature” of a call.  
11 Nothing is hidden or disguised. Again, once you look at this from the perspective of an exchange  
12 carrier providing telephone exchange service to a communications intensive business with the  
13 functional equivalent of a PBX it becomes apparent that Halo is acting perfectly consistently  
14 with industry practice and the ICA. We contend the ICA does not use telephone numbers for  
15 billing, but even if it does signaling the CN would support proper billing since the call is being  
16 originated (or “re-originated” if that term is preferred) by Halo’s end user customer in the MTA.

17 **Q: Neinast claims on page 16 that Halo sometimes changes the CN “from what it**  
18 **originally was.” Is Halo changing any CN information?**

19 A: First let me point out that Neinast’s Attachment MN-3 does not purport to demonstrate  
20 any change to the CN information for any call, contrary to what he represents on page 16.

21 Second, and more important, it’s important to note here that Halo and Transcom connect  
22 on a wireless basis via IP-based methods. More precisely, using SIP. Most SIP methods have a  
23 place in the header for the equivalent of CPN. But SIP “standards” do not contain a formal

1 header for “Charge Number.”<sup>10</sup> Halo cannot be accused of “changing” CN because it does not  
2 receive CN given that there is no place for that type information the IP-based methods that are  
3 used between Halo and its end user customer. To put it succinctly, we do not receive CN or a CN  
4 equivalent, so there is nothing to change.

5 But even if we did receive CN-type information, SS7 industry standards recognize that it  
6 can be changed. For example, if there is CN information for a call that comes to a user who has  
7 turned on call forwarding the network serving the call forwarding user is allowed to remove the  
8 original CN and replace it by populating the forwarding user’s billing number in the CN  
9 parameter. Similarly, if a business customer’s ISDN PBX has populated the Q.931 equivalent to  
10 CN over the d channel with something other than the business customer’s BTN most exchange  
11 carrier end office switches will remove the original information and replace it with the business  
12 customer’s BTN.

13 Halo populates Transcom’s BTN in the address signal portion of the CN parameter. This  
14 is the injection of new information that was not there before, but Halo’s practice in this regard  
15 was perfectly consistent with industry standards for an exchange carrier’s provision of telephone  
16 exchange service to a business end user, and in particular ISDN PRIs that support a business  
17 ISDN PBX. While the technology is different, the functionality is the same and the practice was  
18 permissible.

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<sup>10</sup> Several vendors and providers did begin to include an “unregistered” “private” header around 2005 but there is no “standard” yet. The IETF has been working on a “registered” header for this information since 2008. See D. York and T. Asveren, SIPING Internet-Draft, P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP) (draft-york-sipping-p-charge-info-01) © The IETF Trust (2008), available at <http://tools.ietf.org/html/draft-york-sipping-p-charge-info-01> (describing “P-Charge-Info”, a private Session Initiation Protocol (SIP) header (P-header) used by a number of equipment vendors and carriers to convey simple billing information.”). The most recent draft was released in September, 2011. See D. York, T. Asveren, SIPING Internet-Draft, P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP) (draft-york-sipping-p-charge-info-12), © 2011 IETF Trust, available at <http://www.ietf.org/id/draft-york-sipping-p-charge-info-12.txt>. It is not yet complete.

1 **Q: Neinast claims on page 4 there is “no network or technical reason” for Halo to**  
2 **populate Transcom’s LATA-specific BTN in the CN. Is he correct?**

3 A: No. Halo uses the Transcom CN for network, technical and billing purposes. Halo  
4 populates this information for the same reasons most exchange carriers do so when handling a  
5 call originated by a communications-intensive business end user with the equivalent of a PBX  
6 using a telephone exchange service. Now, from the standpoint of inserting Transcom’s CN in the  
7 signaling information sent by Halo to AT&T, I would agree with Neinast’s suggestion that this  
8 practice should not matter - to AT&T. They get all the call information they need to assess every  
9 call, and more. In fact, while these people accuse Halo of “disguising the true nature of calls” in  
10 order to “avoid access,” the fact of the matter is nothing is being disguised. How else is AT&T  
11 able to make precise determinations of interstate and intrastate traffic mix and calculate the  
12 amount of access they believe is due for Halo’s traffic? They can only do this if they have all the  
13 call details they claim we are changing, manipulating and disguising.

14 **Q: AT&T relies on a single provision in the ICA (XIV.G) for its position. What do you**  
15 **have to say about this reliance?**

16 A: AT&T’s witnesses do not acknowledge other relevant provisions, and they are  
17 misinterpreting that single provision in any event.

18 **Q: What provisions did the AT&T witnesses not discuss?**

19 A: They did not mention sections VI.C or XIV.E.

20 Section IV.C. provides in pertinent part:

21 ... The parties’ respective facilities shall (i) provide the necessary on-hook, off-  
22 hook answer and disconnect supervision (ii) shall hand off calling party number  
23 ID when technically feasible and (iii) shall honor privacy codes and line blocking  
24 requests if possible. ...

25 Section XIV.E states:

1 E. The parties will provide Common Channel Signaling (CCS)  
2 information to one another, where available and technically feasible, in  
3 conjunction with all traffic in order to enable full interoperability of CLASS  
4 features and functions except for call return. All CCS signaling parameters will be  
5 provided, including automatic number identification (ANI), originating line  
6 information (OLI) calling party category, charge number, etc. All privacy  
7 indicators will be honored, and the parties agree to cooperate on the exchange of  
8 Transactional Capabilities Application Part (TCAP) messages to facilitate full  
9 interoperability of CCS-based features between the respective networks.  
10 (emphasis added)

11 As I noted in my Direct, I read these provisions to essentially incorporate industry  
12 standards, including ANSI T1.113. I cannot explain why the AT&T witnesses failed to even  
13 mention them, given their obvious relevance.

14 **Q: Do you agree with the way the AT&T witnesses' read XIV.G?**

15 A: No. Once again they did not completely read a provision and disclose when it applies.

16 XIV.G states:

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

22 AT&T's witnesses are failing to recognize that this specific provision on its face only  
23 applies "where BellSouth *provides* recording capabilities." McPhee and Neinast do not present  
24 any testimony whether BellSouth is "providing" "recording capabilities" as part of any  
25 functionality it is affording to Halo.<sup>11</sup> Instead, they appear to be claiming that the provision

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<sup>11</sup> Counsel has advised me that the FCC has interpreted the term "provide" and did so from the "supply side" perspective. Counsel also advises that the D.C. Circuit affirmed:

The verb 'provide,' the Commission explained, 'is a different and more inclusive term than 'offer.'" Order at 7538-39 P 40. Black's Law Dictionary, upon which the Commission relied, defines "provide" as "[t]o make, procure or furnish for future use, prepare. To supply; to afford; to contribute." Id. (alteration in original) (quoting BLACK'S LAW DICTIONARY 1244 (6th ed. 1990)). Under this definition, the Commission explained, the verb "provide" is broad enough to include the act of supplying a good or service as a component of a larger, integrated product. For instance, under the Commission's interpretation, McDonald's provides beef, as well as hamburgers, and The Washington Post provides ink, as well as newspapers.

1 applies even though AT&T is not providing any recording capability to Halo. I believe that since  
2 AT&T is not providing any recording capabilities to Halo the entire provision does not apply.  
3 Rather, only VI.C and/or XIV.E are the sections in the ICA that govern.

4 **Q: What do you mean when you say AT&T is not providing “recording capabilities” to**  
5 **Halo?**

6 A: Halo has its own call detail capability. We do not need AT&T to record for us. Recording  
7 is not part of a component of any “larger, integrated product” that is supplied to Halo.

8 **Q: But could the provision also pertain to when AT&T “has” recording capability in its**  
9 **tandem?**

10 A: If that is what the drafters meant then they could have easily said so. Instead, they said  
11 “provides” which to me conveys the idea of something AT&T is doing on behalf or for the  
12 benefit of Halo (even if it is part of what is supplied as part of a “larger, integrated product”).  
13 Notice the conscious choice to use different wording in Attachment B-2 of the ICA which speaks  
14 to AT&T tandems “without recording capability.”<sup>12</sup> See also section VI.A.1.a. and b., which  
15 address the situation when Halo “has” “recording capability” but it is not sufficient or “has no”  
16 “recording capability. They did not use the same wording, e.g., “tandems ... that do not provide

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*Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1239 (D.C. Cir. 2007)

<sup>12</sup> Mobile originated IntraMTA traffic over Type 1, Type 2A and Type 2B trunks, which terminate at BellSouth Tandems (Local or Access) and/or BellSouth End Offices, without recording capability, may be billed in either of two ways. Carrier may choose to either be billed a surrogate usage rate, on a per voice grade trunk basis, for mobile originated Traffic completed over one-way outward or two way trunks or may choose to provide Traffic data in a company prescribed format to be used for billing purposes. Carriers’ provided Traffic data will be billed at the rates prescribe in Attachment B-1. If the Carrier chooses to provide Traffic data, then the detail level provided must be in accordance with BellSouth reasonable requirements. Traffic data must be provided no more than 30 days in arrears from the close of the normal billing cycle. If the Traffic data is not received in the BellSouth prescribed format in the specified time period, the surrogate usage rate set forth in this Attachment will be applied. Surrogate Usage for IntraMTA mobile originated Traffic, which terminates in BellSouth’s local service area, shall be billed at a per voice grade trunk level rate as follows: .... (emphasis added)



1 recording capability.” The use of different words tells me they did not mean the same thing. I  
2 think this provision does not even apply.

3 **Q: If the provision does apply, does signaling Transcom’s CN information inhibit**  
4 **AT&T’s ability to bill?**

5 A: I fail to see how it could. We are providing “proper call information” because we are  
6 using industry standards applicable to provision of telephone exchange service to a business end  
7 user. What particularly confounds me is that AT&T is complaining because we are providing  
8 additional information: we populate the CPN *and* the CN. I might understand if we were  
9 providing less information or maybe if we were manipulating CPN, but AT&T is getting more  
10 information, not less.

11 In any event, the ICA does not rate traffic as between reciprocal compensation and  
12 interMTA on a call-by-call basis. Instead, there is a negotiated factor that must be used. Section  
13 IV.F provides:

14 The parties will use an auditable PLU factor as a method for determining the  
15 amount of traffic exchanged by the parties that is Local or Non-Local. The PLU  
16 factor will be used for traffic delivered by either party for termination on the other  
17 party’s network.

18 Similarly section VI.C.3 states:

19 The Parties will use an auditable PLU factor as a method for determining whether  
20 traffic is Local or Non-Local. The PLU factor will be used for traffic delivered by  
21 either party for termination on the other party’s network. The amount that each  
22 party shall pay to the other for the delivery of Local Traffic shall be calculated by  
23 multiplying the applicable rate in Attachment B-1 for each type of call by the total  
24 minutes of use each month for each such type of call. The minutes of use or  
25 portion thereof for each call, as the case may be, will be accumulated for the  
26 monthly billing period and the total of such minutes of use for the entire month  
27 rounded to the nearest minute. The usage charges will be based on the rounded  
28 total monthly minutes.

29 The parties do not use recordings to bill. They use factors. Therefore AT&T does not  
30 “provide” recording as part of its overall product to Halo. Indeed, the calling and called numbers

1 are completely irrelevant to the entire billing exercise. This is particularly so given that – as the  
2 AT&T witnesses take such pains to point out – this is a “wireless” ICA and telephone numbers  
3 are inherently not useable to rate calls as between intraMTA and interMTA.

4 AT&T’s complaint that use of CPN and CN somehow keeps them from billing using call  
5 detail recordings does not make any sense given that traffic is not rated and billed on a call by  
6 call basis using the calling and called numbers.

#### 7 **FACILITIES COST ISSUE**

8 **Q: Do you have a response to the two AT&T witnesses’ testimony on facilities cost?**

9 A: Yes.

10 First, I must observe that neither of them ever describe the actual “facilities” in issue in  
11 terms of what is in place and where, or the actual charges that AT&T is trying to recover. Neither  
12 of them discloses that this is about cross-connects, multiplexing and ports entirely within the  
13 AT&T building and on AT&T’s side of the POI. We shall see if AT&T disagrees with my  
14 testimony on those points.

15 Second, and more important, the two AT&T witnesses’ position in the facilities cost issue  
16 again suffers from a failure of analysis: they do not take into account that Halo is using third  
17 party facilities to reach the POI. They are also quite selective in their reading of the ICA.

18 While it is true the parties are using two-way trunking, both witnesses, I assume  
19 purposefully, quote only part of the sole contract provision they rely on (paragraph V.B). They  
20 excised the first sentence in paragraph V.B.

21 **Q: What does V.B *really* say when read in full?**

22 A: The entire provision – with the part the two AT&T witnesses left out in underline – says:

23 BellSouth and Carrier will share the cost of the two-way trunk group carrying  
24 both Parties traffic proportionally *when purchased via this Agreement or the*

1 General Subscriber Services Tariff, Section A35, or, in the case of North Carolina,  
2 in the North Carolina Connection and Traffic Interchange Agreement effective  
3 June 30, 1994, as amended from time to time. BellSouth will bear the cost of the  
4 two-way trunk group for the proportion of the facility utilized for the delivery of  
5 BellSouth originated Local traffic to Carrier's POI within BellSouth's service  
6 territory and within the LATA (calculated based on the number of minutes of  
7 traffic identified as BellSouth's divided by the total minutes of use on the  
8 facility), and Carrier will provide or bear the cost of the two-way trunk group for  
9 all other traffic, including Intermediary traffic.

10 **Q: Why is the part they excised and particularly the part you italicized important?**

11 A: Because it emphasizes that the entire provision applies only when Halo "purchases" the  
12 "trunk group" via "this Agreement" or from the "General Subscriber Services Tariff."

13 **Q: Did Halo "purchase" the "trunk group(s)" from the "General Subscriber Services**  
14 **Tariff"?**

15 A: No. It looks like that tariff does not exist any more. Instead the former GSST terms are  
16 contained in an AT&T Tennessee "Guidebook."<sup>13</sup> Further, the "purchase" price contained in the  
17 "guidebook" is zero.<sup>14</sup>

18 **Q: Did Halo "purchase" the trunk groups from the ICA?**

19 A: The ICA does not have ordering provisions or prices for "trunk groups" in any schedule.  
20 Nor does it describe or price out terms for cross-connects, multiplexing or trunk ports. Therefore  
21 the answer is no.

22 **Q: Where do AT&T's billings come from?**

23 A: As far as we can determine, AT&T's billing comes from its Special Access Tariff. If  
24 Halo was leasing transport facilities from AT&T Tennessee to get from the Halo network to the

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<sup>13</sup> See GENERAL EXCHANGE GUIDEBOOK Original Page 3.1 and 4, EFFECTIVE: June 1, 2005, A35. INTERCONNECTION OF MOBILE SERVICES, A35.1 Interconnection Services for Mobile Service Providers (MSP's), A35.1.4 BellSouth CMRS Type 2 Interconnection, available at <http://cpr.att.com/pdf/tn/g035.pdf#xml=http://cpr.att.com/bsearch/support/xmlread.jsp?QueryText=Type2A&k2dockey=http://cpr.att.com/pdf/tn/g035.pdf@tnpdf&serverSpec=bic08664:9948>.

<sup>14</sup> See Guidebook section A35.1.5.C.(a).

1 POI this might make some sense. But we chose to use a third party transport provider, not AT&T  
2 Tennessee.

3 **Q: Did Halo “purchase” the trunk groups?**

4 A: No. Halo did not “purchase” the “trunk groups.” I explained on page 42 of my Direct that  
5 Halo consistently told AT&T it was not purchasing anything on AT&T’s side of the POI.

6 **Q: Is there another failure by omission in AT&T’s witnesses’ position?**

7 A: Yes, very much so. They also failed to consider the effect of note 1 to paragraph IV.B.

8 **Q: What do you mean?**

9 A: As I said earlier, Halo uses a third party transport provider. The ICA expressly authorizes  
10 and contemplates that we can do so rather than using AT&T. If the entire set of relevant  
11 provisions – and not just the excerpted, out of context part cited by AT&T – is considered it  
12 becomes clear that when Halo uses a third party transport provider it is not responsible for the  
13 items AT&T is trying to assess.

14 **Q: Please explain.**

15 A: AT&T wholly ignores paragraph IV.B, which sets out the options for interconnection.

16 B. There are three methods of interconnecting facilities: (1) interconnection  
17 via facilities owned, provisioned and/or provided by either party to the other party  
18 [note 1]; (2) physical collocation; and (3) virtual collocation where physical  
19 collocation is not practical for technical reasons or because of space limitations.  
20 Type 1, Type 2A and Type 2B interconnection arrangements described in  
21 BellSouth’s General Subscriber Services Tariff, Section A35, or, in the case of  
22 North Carolina, in the North Carolina Connection and Traffic Interchange  
23 Agreement effective June 30, 1994, as amended, may be purchased pursuant to  
24 this Agreement provided, however, that such interconnection arrangements shall  
25 be provided at the rates, terms and conditions set forth in this Agreement. Rates  
26 and charges for both virtual and physical collocation may be provided in a  
27 separate collocation agreement. Rates for virtual collocation will be based on  
28 BellSouth’s Interstate Access Services Tariff, FCC #1, Section 20 and/or  
29 BellSouth’s Intrastate Access Services Tariff, Section E20. Rates for physical  
30 collocation will be negotiated on an individual case basis.

1                   <sup>[note 1]</sup> On some occasions Carrier may choose to purchase facilities from a  
2 third party. In all such cases carrier agrees to give BellSouth 45 (forty five) days  
3 notice prior to purchase of the facilities, in order to permit BellSouth the option of  
4 providing one-way trunking, if, in its sole discretion BellSouth believes one-way  
5 trunking to be a preferable option to third party provided facilities. Such notice  
6 shall be sent pursuant to Section XXIX. In no event shall BellSouth assess  
7 additional interconnection costs or per-port charges to Carrier or its third-party  
8 provider should Carrier purchase facilities from a third party, e.g. the same  
9 charges that BellSouth would charge Carrier should it provide the service.

10           I will reiterate that Halo has used a third party provider for transport from the Halo  
11 network to the POI at the AT&T tandem buildings. AT&T could have chosen to then extend  
12 one-way trunks, but it did not. Regardless, the ICA expressly says that when third party facilities  
13 are used “in no event shall BellSouth assess additional interconnection costs or per-port  
14 charges to Carrier or its third-party provider should Carrier purchase facilities from a third  
15 party, e.g. the same charges that BellSouth would charge Carrier should it provide the service.”  
16 (emphasis added) This important provision expressly bans the very charges in issue because  
17 AT&T is nonetheless trying to recover “additional interconnection costs or per-port charges ...,  
18 e.g. the same charges that BellSouth would charge” Halo if AT&T was providing “the service.”  
19 AT&T’s charges are banned by the express terms of the ICA.

20 **Q:     Neinast argues on page 18 that the “shared facility factor encompasses the entire**  
21 **facility from the CMRS provider’s Point of Presence (‘POP’) (if their switch is outside of**  
22 **the LATA) or their switch (if it is within the LATA) beyond the POI to the AT&T switch.”**  
23 **What do you say in response?**

24 A:     I will try to point out where we agree and disagree. But first I probably should set out the  
25 relevant ICA provisions given that Neinast does not bother to tie his argument on page 18 to any  
26 contract section other than, perhaps, section V.B., which he excises and quotes out of context.

27           “POI” is a defined term in the agreement. Section I.I. defines Point of Interconnection  
28 (POI) as “the physical geographic location(s), within BellSouth's service area within a LATA, at

1 which the Parties interconnect their facilities for the origination and/or termination of traffic.  
2 This point establishes the technical interface, the test point(s), and the point(s) for operational  
3 division of responsibility between BellSouth's network and Carrier's network."

4       Neinast uses a phrase not used in the ICA. The agreement does not refer to or use the  
5 words "shared facility factor." A similar concept, however, is expressed in section VI.B.2:

6               2.       The Parties agree to share proportionately in the recurring costs of  
7 two-way interconnection facilities.

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

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

18       I have underlined the parts that describe an arrangement that could be said to employ  
19 something called a "shared facility factor." It allocates interconnection facility costs between the  
20 parties by factoring the percent of traffic that is AT&T originated. AT&T then bears cost  
21 responsibility for "interconnection facilities" in proportion to its originating percent, which is a  
22 kind of factor.

23       Please carefully read VI.B.2.b. It says that "BellSouth will bill Carrier for the entire cost  
24 of the facility." It goes on to say that Halo would apply AT&T's "originated percent against the  
25 Local Traffic portion of the two-way interconnection facility charges billed by" AT&T to Halo  
26 and Halo would then "invoice" AT&T "on a monthly basis, this proportionate cost for the  
27 facilities utilized by" AT&T.

28       Mr. Neinast's argument falls apart when you apply the *facts* and *AT&T's actual billing* to  
29 what he says.

1   **Q:     Please explain.**

2   A:     Neinast argues that the “shared facility factor” applies to the entire “facility” between  
3   AT&T’s switch and Halo’s “POP” or “switch” in the LATA. He says that the “facility” goes  
4   between the “POP” or “switch” in the LATA and AT&T’s tandem, and traverses the POI. This  
5   must be so since he uses both “POP” and “POI” in the same sentence, so he must be  
6   distinguishing between the two and claiming they are not the same, with the result that the  
7   “POP” or “switch” is somewhere distant from the “POI.”

8   **Q:     Why does this make a difference?**

9   A:     Under Neinast’s theory there must be more “facilities” in the LATA than just the cross-  
10   connects, MUXes and AT&T switch ports that are on AT&T’s side of the POI and that go to the  
11   POI. After all, he says that the “facilities” traverse the POI and go between the AT&T switch and  
12   Halo’s switch or POP in the LATA.

13         Again, carefully scrutinize VI.B.2.b. It says that AT&T will start the process and “bill  
14   Carrier for the entire cost of the facility.” If Neinast were right, then AT&T would be sending  
15   Halo a bill for more “facilities” than just those on AT&T’s side of the POI; the bill would be for  
16   everything from AT&T’s switch all the way to Halo’s switch or POP.

17   **Q:     Is AT&T sending a bill for any “facilities” on Halo’s side of the POI that go to**  
18   **Halo’s switch or POP in the LATA?**

19   A:     No. They are only billing for the cross-connect, MUX and switch port on AT&T’s side of  
20   the POI, and in one instance, Nashville, for Entrance Facility to establish connectivity between  
21   Halo’s third party transport provider and AT&T’s tandem building

22   **Q:     So AT&T’s own billing is inconsistent with Neinast’s theory?**

1 A: Yes. This is all explained, of course, by the fact that Halo has bought transport from a  
2 third party. There is nothing for AT&T to bill (except the aforementioned Nashville Entrance  
3 Facility, where Halo's third party CFA is not in the same building as the AT&T tandem). Yet  
4 under Neinast's theory AT&T would bear cost responsibility in proportion to its originating use  
5 and Halo could bill AT&T for that portion of the third party transport provider's costs.

6 VI.B.2.b, however, does not have a mechanism for Halo to bill back AT&T for third  
7 party transport; the entire mechanism is built around the situation where AT&T is the one that is  
8 providing transport on Halo's side of the POI

9 I submit that the best reading of the ICA is that the factoring of facility costs for two-way  
10 trunking applies only when AT&T is providing transport "facilities" on Halo's side of the POI.  
11 When third party transport is used, then IV.B and note 1 apply and "[i]n no event shall BellSouth  
12 assess additional interconnection costs or per-port charges per-port charges to Carrier or its third-  
13 party provider should Carrier purchase facilities from a third party, e.g. the same charges that  
14 BellSouth would charge Carrier should it provide the service." There is no factoring across the  
15 entire facility from Halo's switch or POP in the LATA when third party transport is used.  
16 Financial responsibility ends at the POI.

17 **Q: Is there any AT&T originated traffic?**

18 A: There may be some small amount, but it is minimal at present. Transcom has advised  
19 Halo, however, that it is developing additional enhanced products that would have traffic coming  
20 from the PSTN addressed to numbers assigned to Transcom by Halo. Once those are deployed  
21 then the traffic will not be 100% (or close) from Halo to AT&T.



1 **Q: If the TRA adopts Neinast’s theory that the “shared facility factor” applies to all**  
2 **facilities on both sides of the POI should it provide a mechanism for Halo to bill AT&T for**  
3 **its share of the third party facilities Halo obtains, based on AT&T’s originating percent?**

4 A: I disagree with Neinast’s theory because it is not supported by the ICA or AT&T’s own  
5 billings. Nor does it make any sense when third party transport is in the picture.

6 But if the TRA adopts his theory then it must also make clear that once AT&T has a  
7 material amount of originating traffic going to Halo’s network AT&T must – consistent with  
8 V.I.B.2.b – start sending Halo a bill “for the entire cost of the facility” including the third party  
9 provided “facility.” Halo will “then apply the BellSouth originated percent against the Local  
10 Traffic portion of the two-way interconnection facility charges billed by BellSouth to Carrier”  
11 and “invoice AT&T.” Since Halo is presently getting a bill directly from the third party provider,  
12 AT&T will have to assume responsibility for paying the third party transport provider’s charges.  
13 Otherwise Halo would be billed twice for the same thing.

#### 14 **REBUTTAL TO VARIOUS FACTUAL ASSERTIONS**

##### 15 ***Quantification***

16 **Q: Do you agree with Mr. McPhee’s calculation of amounts allegedly owed for**  
17 **Tennessee (\$699,269) and “entire ILEC territory” (\$14,043,110) that appears on page 4 of**  
18 **his Direct?**

19 A: No.

20 **Q: Do you agree with Mr. McPhee’s calculation of the “facilities” charges for**  
21 **Tennessee (\$249,311,68) that appears on page 10 of his Direct, and Mr. Neinast’s**  
22 **restatement of the same amount on page 19 of his Direct?**

23 A: No.

1 **Q: Do you agree with Mr. Neinast's assertion on page 18 that "Halo has not paid any of**  
2 **the charges that have been billed to it for the facilities it uses to interconnect with AT&T"?**

3 A: No. As I testified on pages 22, 34 and 37 of my Direct Halo has paid AT&T a  
4 considerable sum for Tennessee related activity.

5 *AT&T knew from the beginning that 100% of the traffic would be intraMTA*

6 **Q: On pages 8-9 of his Direct Mr. Neinast expresses some surprise and consternation**  
7 **that 100% of Halo's traffic is intraMTA and he claims that is "unusual" and "anomalous."**  
8 **Do you have a response?**

9 A: Yes. While Mr. Neinast might be able to claim some surprise, AT&T cannot. Halo told  
10 AT&T from the beginning that 100% of its traffic would be intraMTA because the network and  
11 service was designed to send only intraMTA traffic to AT&T. We told them this many times, in  
12 writing and orally at the beginning and throughout. They did not have to look at traffic data to  
13 discover that this is so.

14 **Q: Is this unusual or anomalous?**

15 A: It may be different and not what all the other CMRS providers experience. But Halo has a  
16 different network, offers a different service, uses different technology and therefore does things  
17 in different ways. There is nothing wrong with that.

18 **Q: Neinast speculates on page 14 that the sole reason Halo exists is to "avoid paying**  
19 **access charges." Is that true?**

20 A: No. And it demonstrates how speculation without facts is a form of hallucination.  
21 Avoidance of access charges is neither a business nor a basis for existence. Halo exists to meet  
22 the growing demand for next generation, wireless, IP-based services. Halo exists to provide low  
23 cost wireless broadband and interconnected service to businesses and consumers. All that

1   Neinast's comment signals to me is that AT&T is beholden to, and obsessed with, a subsidy  
2   laden, obsolete, but profit pumping access charge scheme that the FCC is committed to  
3   eliminating, but that AT&T wants to milk for every dime before its long overdue demise.

4           The United States has a capitalist and market-based economic system and that system  
5   only works when innovation and technology advancement is encouraged rather than being  
6   hobbled, banned or taxed. AT&T and all of the other ILECs are effectively asking the TRA to  
7   protect them from competition, and to apply its regulatory power to slow or prohibit new and  
8   different ways of providing communications because they lose market power or revenue when  
9   that occurs. Ultimately they want this agency to bail them out and erect a walled garden around  
10   each of their local exchange areas, where any competitor or end user of a competitor must pay an  
11   above-cost access fee as the price of entry. I fail to see how Tennessee's consumers benefit from  
12   such action. Halo's business model and presence in the Tennessee market has the effect of  
13   lowering the cost of telecommunications service for Tennessee's consumers. It does this in  
14   several ways, one being that it hastens the transition of voice communications off legacy, high  
15   cost TDM networks and onto more efficient, more feature rich IP networks. Halo's business  
16   model brings wireless broadband to places that have limited, high cost, or no, broadband  
17   alternatives. If the TRA rules against Halo, it will be saying that it wants Tennessee consumers to  
18   continue to subsidize the profits and legacy networks of AT&T and the ILECs, while these  
19   entities move at a snail's pace bringing innovation to Tennessee, and when they do finally get  
20   around to investing in next generation technology, they will keep rates the same, or even raise  
21   them. The TRA will be saying that Congress was wrong when it provided in § 157(a) of the Act  
22   that "[i]t shall be the policy of the United States to encourage the provision of new technologies  
23   and services to the public." The TRA will not be "favoring diversity of media voices, vigorous

1 economic competition, technological advancement, and promotion of the public interest,  
2 convenience, and necessity.” See § 257(b).

3 *Halo has an end user other than Transcom in Tennessee*

4 **Q: Neinast asserts that Halo has no retail end users in Tennessee. Is that correct?**

5 A: Halo has another customer besides Transcom in Tennessee. We continue to try to obtain  
6 even more customers, but our ability to run the business and conduct marketing has been  
7 seriously hobbled by the ILECs’ onslaught. We can’t grow the business if we are spending most  
8 of our time and free cash flow engulfed in legal proceedings. The cost of the proceedings has  
9 consumed all of the cash we were spending, and planned to spend on retail marketing.

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

16 The problem is AT&T and the ILECs want to eliminate us as a competitor for this and all  
17 other products.

18 **AT&T’S REQUEST FOR PERMISSION TO “BLOCK RECEIPT OF TRAFFIC”**

19 **Q: McPhee on pages 3-4 asks the TRA to allow AT&T to “block receipt of traffic from**  
20 **Halo.” Do you have any comment on this request?**

21 A: I will let the lawyers debate the legal propriety of such action. I do note, however, that  
22 under Mr. Neinast’s numbers-based “study” a substantial amount of the traffic in issue would be  
23 interstate, in that the calling and called numbers are rate centered in different states. Under

1 Halo's theory the proportions would be different, but we would reach the same conclusion. Our  
2 base station that serves MTA 11 (Atlanta) is in Cartersville Georgia. Transcom's radio  
3 equipment that connects to our base station there is in Georgia, not Tennessee. Thus, although  
4 the calls are intraMTA they are also interstate. Based on the advice of regulatory counsel, I'm  
5 not sure the TRA has the authority to "authorize" AT&T to block jurisdictionally interstate  
6 traffic.

7 **Q: Does this conclude your rebuttal testimony?**

8 A: Yes. I reserve the right to make corrections of any errors we may discover by submitting  
9 an *errata*.

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**Choose Query Type:**

- ☒ Single TN  
210 646 1457
- ☐ TN Range
- ☐ Multiple TNs (comma separated)
- ☐ Import File (xlsx, xls, csv or txt)
- ☐ Thousand Block Report (NPA-NXX-X)
- ☐ Code Report (NPA-NXX)

SubmitClear

**Display Options:**

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#	TN (click on TN for history)	Status	NPAC SPID	NPAC Company Name	Alt SPID	Last Alt SPID	NANPA OCN	SV Type
1	<a href="#">210-646-1457</a>	Ported - Intra	979E	BANDWIDTH.COM/1	X409		004F	Wireline

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		NANPA Code Owner (NPA-NXX)			PAS Block Owner (NPA-NXX-X)			NPAC Code Owner (NPA-NXX)		ILEC/RBOC for Rate Center		
#	TN	Status	OCN	OCN Name	OCN	OCN Name	Status	Effective Date	SPID	SPID Name	OCN	OCN Name
1	210-646-1457	Ported - Intra	9533	SOUTHWESTERN BELL	004F	BANDWIDTH.COM CLEC, LLC - TX	Assigned	03/06/2009	9533	SouthWestern Bell/1		LERG/DIR Lisg Required
												LERG/DIR Listing Required

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210

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#	TN	Region	State	LATA	Rate Center	Display Map
1	210-646-1457	Southwest	Texas	566 - SAN ANTONIO TEXAS	SANANTONIO	<a href="#">Map</a>

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**Choose Query Type:**

☒ Single TN  
512 633 3498

☐ TN Range

☐ Multiple TNs (comma separated)

☐ Import File (xlsx, xls, csv or txt)

☐ Thousand Block Report (NPA-NXX-X)

☐ Code Report (NPA-NXX)

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☒ Show NPAC Routing

☒ Show Code/Block Information

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TN OWNERSHIP GEOGRAPHY NPAC ROUTING CODE/BLOCK INFORMATION NPAC IP FIELDS

#	TN (click on TN for history)	Status	NPAC SPID	NPAC Company Name	Alt SPID	Last Alt SPID	NANPA OCN	SV Type
1	<u>512-633-3498</u>	Ported - Inter	6529	T-Mobile US-TSI/2			6529	Wireless

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**Choose Query Type:**

- ☒ Single TN  
512 633 3498
- ☐ TN Range
- ☐ Multiple TNs (comma separated)
- ☐ Import File (xlsx, xls, csv or txt)
- ☐ Thousand Block Report (NPA-NXX-X)
- ☐ Code Report (NPA-NXX)

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#	TN	Region	State	LATA	Rate Center	Display Map
1	512-633-3498	Southwest	Texas	558 - AUSTIN TEXAS	AUSTIN	<a href="#">Map</a>

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830

522

4656

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TN OWNERSHIP   GEOGRAPHY   NPAC ROUTING   CODE/BLOCK INFORMATION   NPAC IP FIELDS

#	TN (click on TN for history)	Status	NPAC SPID	NPAC Company Name	Alt SPID	Last Alt SPID	NANPA OCN	SV Type
1	<u>830-522-4656</u>	Ported - Intra	8824	Level_3_Comm-TNS:8824/1	8824	8824	6114	Wireline

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830

522

4656

☐ TN Range☐ Multiple TNs (comma separated)☐ Import File (xlsx, xls, csv or txt)☐ Thousand Block Report (NPA-XXX-X)☐ Code Report (NPA-NXX)

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Clear

**Display Options:**☒ Show Geography☒ Show NPAC Routing☒ Show Code/Block Information☒ Show NPAC IP Fields**SEARCH RESULTS (1 TNs)**

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TN OWNERSHIP   GEOGRAPHY   NPAC ROUTING   CODE/BLOCK INFORMATION   NPAC IP FIELDS

#	TN	Region	State	LATA	Rate Center	Display Map
1	830-522-4656	Southwest	Texas	566 - SAN ANTONIO TEXAS	BANDERA	<a href="#">Map</a>