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January 6, 2012

VIA HAND DELIVERY

filed electronically in docket office on 01/06/12

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:

Pre-Hearing Memorandum
Notice of Correction to Testimony.

Very truly yours,

Joelle Phillips



768675

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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

Docket No. 11-00119

NOTICE OF CORRECTION TO TESTIMONY

In order to save time in the introduction of testimony at the evidentiary hearing on January 17, 2012, and to provide advance notice to all concerned, AT&T Tennessee hereby submits this Notice of Correction to Testimony, which applies to the Attachment MN-3 to the Direct Testimony of Mark Neinast on behalf of AT&T Tennessee. The corrected version of Attachment MN-3 is attached hereto and will be submitted at the evidentiary hearing. Mr. Neinast states that the corrections made to his Attachment MN-3 do not alter any of the conclusions in his testimony or affect the results or the validity of the AT&T call study he discusses in his testimony.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, LLC
dba AT&T Tennessee

By: 

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Sample Call Records Showing Halo's Improper Sending of Landline-Originated Traffic and Improper Insertion of a Halo Charge Number to Make Toll Calls Appear Local

Example of a Halo Wireless Call Record (Based on SS7 Data)

CARRIER CODE	DIRECTION	DATE	CALLING NUMBER (CPN)	CALLING STATE	CHARGE NUMBER (CN)	CHARGE STATE	CHARGE NUMBER	CHARGE STATE	NUMBER	STATE	NUMBER	STATE
429F	T	9/25/2011 0:12	530-315-3XXXX	CA	865-321-1901	CA	865-321-1901	CA	865-453-XXXX	TN	865-453-XXXX	TN
429F	T	9/25/2011 0:37	719-974-9XXXX	CO	865-321-1901	CO	865-321-1901	CO	865-458-XXXX	TN	865-458-XXXX	TN
429F	T	9/25/2011 0:40	918-542-5XXXX	OK	865-321-1901	OK	865-321-1901	OK	865-458-XXXX	TN	865-458-XXXX	TN
429F	T	9/25/2011 8:01	713-574-1XXXX	TX	865-321-1901	TX	865-321-1901	TX	865-471-XXXX	TN	865-471-XXXX	TN
429F	T	9/25/2011 8:16	856-467-9XXXX	NJ	865-321-1901	NJ	865-321-1901	NJ	865-453-XXXX	TN	865-453-XXXX	TN

Halo-Populated Charge Number which is always local to the Called Number. If you look up the Halo-Populated Charge Number in the LERG, it belongs to Halo. Note that the Charge Number is always the same, even though calls originated in different states and from different NPA-NXXs.

True originating Customer Number. All calls in this random sample originated from non-Halo carriers as verified in the LERG and LNP database. Four out of five (80%) of the calls in this random sample originated from landline carriers. These are the bottom four calls in the table. The calls were originated by, respectively, Comcast, Southwestern Bell, Bandwidth.com, and Comcast.

For a Typical Wireless Originated IntraMTA call, the Calling Party Number (CPN) is local to the Called Number

Typical Wireless Call does not contain a Charge Number, but if a Charge Number exists, it is located in the same jurisdiction of the Calling Party Number.

Example of a Wireless Originated Non-Halo Call Record (Based on SS7 data)

CARRIER CODE	DIRECTION	DATE	CALLING NUMBER (CPN)	CALLING STATE	CHARGE NUMBER (CN)	CHARGE STATE	CHARGE NUMBER	CHARGE STATE	NUMBER	STATE	NUMBER	STATE
XXXX	T	9/25/2011 0:00	865-332-XXXX	TN	--	--	--	--	865-237-XXXX	TN	865-237-XXXX	TN
XXXX	T	9/25/2011 0:01	865-323-XXXX	TN	--	--	--	--	865-388-XXXX	TN	865-388-XXXX	TN
XXXX	T	9/25/2011 0:01	865-308-XXXX	TN	--	--	--	--	865-363-XXXX	TN	865-363-XXXX	TN
XXXX	T	9/25/2011 0:03	865-322-XXXX	TN	--	--	--	--	865-236-XXXX	TN	865-236-XXXX	TN
XXXX	T	9/25/2011 0:04	865-308-XXXX	TN	--	--	--	--	865-255-XXXX	TN	865-255-XXXX	TN

LEGEND

- Carrier Code is the OCN of the carrier sending the traffic and is determined based on the NPA-NXX assignment in the LERG.
- Calling Party Number is the CPN of the originator of the call.
- Charge Number is the CN and indicates which number should be billed for the call.

Note: The last four digits of the Calling Party Number (CPN) and Called Number are withheld for CPNI considerations. The originating party is unaware that its call is being routed through the Transcom/Halo routing scheme. The NPA-NXX digits are sufficient to determine whether a call is landline-originated and the jurisdiction of the call (the CPN was verified against the LNP database to insure the number was not ported to another provider).

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2012, a copy of the foregoing document was served on the following, via the method indicated:

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

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

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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

Docket No. 11-00119

**PRE-HEARING MEMORANDUM OF
BELLSOUTH TELECOMMUNICATIONS, LLC DBA AT&T TENNESSEE**

INTRODUCTION

The case involves an important but straightforward dispute over three separate types of breaches of an interconnection agreement (“ICA”) between AT&T Tennessee (“AT&T”) and Halo Wireless, Inc. (“Halo”).

First, the ICA requires Halo (which purports to be a wireless carrier) to send only wireless-originated traffic to AT&T. In fact, however, almost three-quarters of the traffic Halo sends to AT&T is *not* wireless-originated, but rather originates on landline networks. Because such landline calls are not authorized by the ICA, they are subject to AT&T’s tariffed access charges, but Halo has refused to pay any such charges. Halo claims this is okay because all such calls are “re-originated” as wireless local calls within Tennessee. But Halo’s idea that a long-distance call initiated in California can be treated as a wireless, local call when it is terminated in Tennessee does not even pass the red-face test. Rather, it’s just an excuse to avoid paying access charges and instead get away with paying a much lower charge that does not apply.

Second, the ICA also requires Halo to include proper call detail on the traffic it sends to AT&T, but Halo has been inserting an unauthorized number into the call records to make all calls it sends to AT&T appear to be local, relying on the same flawed “re-origination” theory.

Halo does not seriously try to defend this practice and now says it has abandoned it, but that does not absolve Halo for its prior breaches of the ICA.

Finally, the ICA also requires Halo to pay for the interconnection facilities it uses to connect with AT&T, but again Halo simply refuses to pay its bills.

Halo already owes AT&T more than \$700,000 in access charges for landline-originated traffic (and \$14 million across AT&T's ILEC territory), an amount that grows each day that Halo is allowed to keep up this scheme. AT&T has little hope of ever seeing that money, given Halo's bankruptcy filing, but does need prompt relief from this access-avoidance scheme to stop the ongoing, growing harm. In light of Halo's breaches of the ICA, the Authority should issue an order authorizing AT&T to terminate the ICA and finding that Halo is liable for the full amount of the applicable access charges on the traffic it has sent to AT&T and for the full amount AT&T has billed it for interconnection facilities.

BACKGROUND

Throughout its testimony and pleadings, Halo has tried to sow confusion with multiple, changing theories that are baseless and often unexplained. Rather than hunt down and refute each such diversion, AT&T focuses this brief on the key, dispositive points in this case. The Authority should not be distracted by Halo's shotgun approach, for the governing facts and law here are not complicated, and all demonstrate Halo's breaches of the ICA and the need to allow AT&T to terminate that ICA.

Wireless-Originated Traffic. When Halo first contacted AT&T about entering an interconnection agreement, Halo purported to be a wireless carrier and therefore opted into

another carrier's wireless ICA for Tennessee.¹ Because Halo was a new carrier, however, AT&T insisted that the ICA contain a clause requiring all the traffic sent by Halo to be wireless-originated. One reason why this is important is that wireless and landline traffic must be delivered to AT&T on separate trunk groups in order to ensure proper billing for each type of traffic.² The parties signed an ICA amendment to that effect on the same day as the ICA.³

As AT&T has discovered, however, Halo has not been sending AT&T traffic from typical CMRS end-users. Rather, under Halo's arrangement, which is depicted in detail in the diagram in Attachment 1 hereto, every call delivered to AT&T comes from a third-party carrier, then passes through Halo's customer, Transcom Enhanced Services, Inc. ("Transcom"), and then through Halo before being delivered to AT&T. More importantly, about 74% of the traffic Halo sends to AT&T originates on the networks of *landline* carriers, in direct violation of the ICA.⁴

Charge Number Information. Another important aspect of interconnection between carriers is the exchange of accurate call detail information. This information includes the phone number of the person that originated the call (the Calling Party Number, or "CPN") and, in some rare instances, a different number for the person or entity that bears financial responsibility for a call (the Charge Number, or "CN").⁵ A Charge Number might be used, for example, when a business has 100 different lines for its employees but wants all calls on those lines to be billed to a single number. In that situation, calls from those 100 lines would include call detail that

¹ McPhee Rebuttal at 5.

² Neinast Direct at 5-6. Separating landline from wireless traffic is important because the federal rules governing intercarrier compensation for landline calls and wireless calls are based on materially different types of geographic boundaries, such as rate center/exchange boundaries and LATAs for landline traffic and Major Trading Areas ("MTAs") for wireless calls. Because the "local" calling areas for landline traffic are much smaller than the "local" areas for wireless traffic, landline traffic is subject to access charges more often. McPhee Direct at 8.

³ McPhee Direct, Att. JSM-2.

⁴ Neinast Direct at 3, 11 & Att. MN-3.

⁵ *Id.* at 15-16.

showed both the CPN for the actual line that originated the call and the CN for the number that will be charged for the call.⁶

As AT&T has discovered, however, Halo has not been following the industry practice for CN. Instead, as Halo admits,⁷ Halo has inserted a CN assigned to its customer, Transcom, into the call detail record on *every* call it sends to AT&T, and in every case the CN is local to (*i.e.*, in the same local calling area as) the number the call is being terminated to. Thus, for example, a call destined for Nashville may begin in Texas and therefore have a CPN in Texas, but Halo then inserts a Nashville CN into the call detail to make the call appear to be a Nashville local call rather than an interstate long-distance call.⁸ There is no possible legitimate reason for what Halo has done. Rather, Halo does this only because changing the CN makes the calls appear local.

Interconnection Facilities. When a landline incumbent LEC, like AT&T, interconnects with a wireless carrier, as Halo purports to be, the wireless carrier uses certain facilities to interconnect to AT&T. Consistent with industry practice and the ICA, compensation for these facilities is based on a “shared use” factor, under which the financial responsibility for the facilities is determined based on the percentage of the total traffic each carrier sends to the other.⁹ In this case, 100% of the traffic between the parties comes from Halo, so Halo should bear 100% of the applicable facility costs. Thus far, however, Halo has refused to pay AT&T’s charges for those facilities Halo has obtained from AT&T.

⁶ *Id.*

⁷ Wiseman Rebuttal at 15-16.

⁸ See Neinast Direct, Att. MN-3.

⁹ Neinast Direct at 18-19.

ARGUMENT

I. HALO IS BREACHING THE ICA BY SENDING LANDLINE-ORIGINATED TRAFFIC TO AT&T.

As noted above, the parties' ICA permits Halo to send *only* wireless-originated traffic to AT&T, not any landline-originated traffic. Specifically, the ICA states as follows:

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 [Halo] delivers traffic to AT&T** for termination by AT&T or for transit to another network. (Emphasis added).

When AT&T conducted a detailed call study of the traffic Halo has been sending it, however, it discovered that 74% of the traffic Halo sends to AT&T is landline-originated, *i.e.*, it begins on the network of a landline carrier via a call placed by the landline carrier's end-user.¹⁰ Mr. Neinast explained AT&T's call study in his direct testimony, and Halo does not deny that it sends calls to AT&T that begin on landline carriers' networks.¹¹ That breaches the ICA.

Remarkably, however, Halo contends that it is not breaching the ICA. Halo's argument is not based on any serious factual dispute about the traffic study. Instead, Halo's contention is based on a "wireless in the middle" theory, which runs as follows: Transcom is an "enhanced service provider" ("ESP"); ESPs are treated as "end-users"; therefore, Transcom must be treated as an end-user; and, therefore, Transcom must be deemed to "re-originate" every call that passes through it on the way to Halo.¹² In other words, Halo contends that when a landline

¹⁰ *Id.* at 3, 11 & Att. MN-3. As explained in that testimony (at 10-11), AT&T can determine whether the call is originated on a landline by determining whether the telephone number has been assigned or ported to a landline carrier as opposed to a wireless carrier.

¹¹ Wiseman Direct at 14.

¹² *Id.* at 18, 20; Johnson Rebuttal at 16.

end-user picks up a phone, dials a number and makes a call, those calls are actually “re-originated” when they pass through Transcom and are transformed from a landline call to a wireless call and from a long-distance call to a local call. There are several fatal flaws in that theory.

A. Halo’s “ESP” Theory is Baseless.

First, and dispositively, the FCC has expressly rejected Halo’s theory in a recent clarification of the existing federal rules on intercarrier compensation. In its recent *Connect America Order*, the FCC singled out Halo by name, described Halo’s arrangement of having traffic pass through an alleged ESP (*i.e.*, Transcom) before reaching Halo, noted Halo’s theory that calls in this arrangement are “re-originated” in the middle by Halo’s alleged ESP customer, and flatly rejected that theory. The FCC’s discussion is worth quoting in full:

1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. As noted above, this rule, referred to as the “intraMTA rule,” also governs the scope of traffic between LECs and CMRS providers that is subject to compensation under section 20.11(b). The *USF/ICC Transformation NPRM* sought comment, *inter alia*, on the proper interpretation of this rule.

1004. The record presents several issues regarding the scope and interpretation of the intraMTA rule. Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. We therefore take this opportunity to remove any ambiguity regarding the interpretation of the intraMTA rule.

1005. We first address a dispute regarding the interpretation of the intraMTA rule. **Halo Wireless (Halo) asserts that it offers “Common**

Carrier wireless exchange services to ESP and enterprise customers” in which the customer “connects wirelessly to Halo base stations in each MTA.”¹³ It further asserts that its “high volume” service is CMRS because “the customer connects to Halo’s base station using wireless equipment which is capable of operation while in motion.” Halo argues that, for purposes of applying the intraMTA rule, “[t]he origination point for Halo traffic is the base station to which Halo’s customers connect wirelessly.” On the other hand, ERTA claims that Halo’s traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used “in the middle,” this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that “it is unclear whether the intraMTA rules would even apply in that case.”

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the “re-origination” of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo’s contrary position. (Emphasis added, footnotes omitted).¹⁴

In these paragraphs the FCC conclusively rejects Halo’s theory that calls that begin with an end-user dialing a call on a landline network can be “re-originated” and magically transformed into wireless (CMRS) calls simply by passing through an alleged ESP with wireless equipment (*i.e.*, Transcom) in the middle of the call. Indeed, the FCC made clear that it was not introducing a

¹³ The FCC cited two Halo *ex parte* filings for this description. The alleged ESP is Transcom.

¹⁴ Connect America Fund, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011) (“*Connect America Order*”).

new concept or a change in law. Rather, it just “clarif[ied]” what the law has always been and explained how that existing law applied to Halo’s particular scheme.

Moreover, Halo’s argument is also at odds with the ordinary meaning of the term “originate.” Webster’s defines “originate” to mean “to give rise to, to initiate, or to begin.” Clearly, Halo’s or Transcom’s role in the middle of a call from Person A in California to Person B in Tennessee would never be considered the role of the “originator.” When Person B answers the call and Person A is on the other end, then Person A is considered the originator.

Second, even if Halo were an ESP, there is absolutely no authority for Halo’s claim that ESPs are deemed to “re-originate” every call they touch. That is because ESPs are not deemed to be end-users for any and all purposes. To the contrary, the FCC has made clear that ESPs “are treated as end-users *for the purpose of applying access charges*”¹⁵ and “are treated as end users *for purposes of our access charge rules.*”¹⁶ Thus, the “ESP exemption” is a narrowly crafted fiction that allows ESPs to be treated like end users *for the purpose for not having to pay access charges*. But the FCC has never held that this means an ESP can use this limited access charge exemption to claim it “originates” calls that, in fact, began several states away, much less transform calls from landline to wireless. Thus, Halo cannot seriously claim that a landline call from California, for example, to Tennessee somehow re-originate and changes

¹⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151, ¶ 11 (2001) (“*ISP Remand Order*”) (emphasis added, subsequent history omitted).

¹⁶ *Northwestern Bell Tel. Co. Petition for Declaratory Ruling*, 2 FCC Rcd. 5986, ¶ 21 (1987), *vacated as moot*, 7 FCC Rcd. 5644 (1992) (“*Northwestern Bell Order*”).

from landline to wireless, and long-distance to local, merely because, unbeknownst to the originating caller, it passes through a Transcom facility in Tennessee.¹⁷

A simple analogy makes the point clearly. Assume a newspaper delivery boy delivers *The Tennessean* for a quarter each, but charges 50 cents to deliver any other paper. The delivery boy then signs a contract with Halo to deliver *The Tennessean* for Halo for a quarter each. Halo gives the boy papers to deliver, with each paper in a plastic bag labeled *The Tennessean*. While delivering the papers supplied by Halo, the boy happens to look inside the plastic bags labeled *The Tennessean* and sees that all of the papers are actually *The New York Times*. Does wrapping *The New York Times* in a *Tennessean* plastic bag turn it into *The Tennessean*? Of course not, and passing landline-originated long-distance calls through Transcom does not turn them into wireless-originated local calls.

Third, Halo cannot claim that Transcom's alleged ESP status could somehow make Halo exempt from access charges. The FCC has made clear that the ESP exemption from access charges applies only to the ESPs themselves, not to any telecommunications carriers (like Halo) that serve them.¹⁸ Thus, regardless of Transcom's alleged status, there is no basis for Halo to claim it is exempt from access charges on the toll traffic it has been sending to AT&T.

¹⁷ Halo claims that the FCC "has consistently recognized that ESPs – as end users – 'originate' traffic even when they receive the call from some other end-point." Wiseman Direct at 15 n. 11. But Halo does not cite a single FCC decision, or any decision by any other entity, that holds this. Halo also tries to compare Transcom to an entity using a "Leaky PBX," as if it that legitimizes Halo's conduct. Wiseman Rebuttal at 4. That alleged comparison to a Leaky PBX is telling, because the FCC long ago recognized that leaky PBXs – just like Halo's and Transcom's current scheme – constituted a form of "access charge avoidance" that needed correction. *MTS and WATS Market Structure*, 97 FCC Rcd. 682, ¶ 87 (1983). Simply put, the only time the FCC has actually addressed what Halo and Transcom are doing is in the *Connect America Order*, where it rejected the same argument Halo is making here.

¹⁸ *Northwestern Bell Tel. Co. Petition for Declaratory Ruling*, 2 FCC Rcd. 5986, ¶ 21 (1987) (this decision was later vacated as moot, 7 FCC Rcd. 5644 (1992), but still carries weight as the FCC's explanation of the limits on the ESP exemption as not applying to anyone but the ESP itself); *Illinois Bell Tel. Co. v. Global NAPs Illinois, Inc.*, Docket No. 08-0105, at 22, 42 (Ill. Comm. Comm'n Feb. 11, 2009) (the ESP exemption "exempts ESPs and only ESPs,

Fourth, Transcom does not qualify as an ESP in any event. The FCC has established a bright-line rule that the “enhanced” service designation does not apply to services that merely “facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service,” and that a service is not “enhanced” when the service does not alter the fundamental character of the service *from the end-user’s perspective*.¹⁹ Thus, for example, the FCC has held that services are not “enhanced” when customers use the same dialing method for allegedly “enhanced” calls that they would for any other call,²⁰ or where the alleged “enhancement” was made “without the advance knowledge or consent of the customer” that placed the call and that customer is not “provided with the ‘capability’ to do anything other than make a telephone call.”²¹ That is the case here, where Transcom provides no services to actual end-users and does not offer any enhancements discernable to the person that actually places the call.²² Indeed, end-users are completely unaware that Transcom is even involved in call delivery.²³ Not surprisingly, then, another state commission has found Transcom does not provide any “enhanced” service.²⁴

from certain access charges” and does not apply to carriers that transport calls for ESPs); *Pacific Bell Tel. Co. v. Global NAPs Cal., Inc.*, D.09-01-038, Order Denying Rehearing of D.08-09-027, at 11, 2009 WL 254838, at *5 (Cal. P.U.C. Jan. 29, 2009) (“the [ESP] exemption applies only to the ESP itself, not to the carrier of ESP traffic”); *In re Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas*, Order No. 16, Dkt., Nos. 06-BTKT-365-ARB et al., 2005 Kan. PUC LEXIS 868 (Kan. Corp. Comm’n 2005) (“the [ESP] exemption applies to the information service provider, not to carriers . . . that provide service to ESPs and other customers”).

¹⁹ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

²⁰ *Petition for Declaratory Ruling That AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 15 (2004) (“IP-in-the-Middle Order”).

²¹ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826, ¶ 16 n. 28 (2005) (“AT&T Calling Card Decision”).

²² Neinast Rebuttal at 5.

²³ *Id.*

²⁴ *Palmerton Tel. Co. v. Global NAPs South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2011 WL 1259661, at 16-17 (Penn. PUC, Mar. 16, 2010) (“we find that Transcom does not supply GNAPs with ‘enhanced’ traffic under applicable federal rules”). Note that this decision came after the bankruptcy court rulings on which Halo relies, and specifically rejected the reasoning in those rulings. In any event, the bankruptcy decisions Halo

Moreover, although the ESP point is irrelevant, Mr. Johnson's rebuttal testimony does not show Transcom is an ESP. Once one wades through the sea of jargon in that testimony, it boils down to a claim that Transcom reduces background noise and inserts "comfort noise" (white noise) in periods of silence (*e.g.*, filtering the vacuum cleaner running in the background, adding low background noise so a customer can tell that the call is still active).²⁵ The Pennsylvania Commission rejected the identical claim in *Palmerton*, finding that "the removal of background noise" and "the insertion of white noise" do not make Transcom an ESP.²⁶ The alleged "enhancements" that Transcom claims it makes to calls that transit its network are simply processes to improve the quality of the call. Telecom networks have been routinely making those types of improvements for years, in some cases, decades. Equipment has compressed and expanded the dynamic range of a voice call to improve clarity. Network improvements like adaptive equalization have improved the quality of transmission. The conversion from analog to digital and back to analog has significantly improved call quality, yet none of these processes are deemed "enhancements" in the sense of an ESP.²⁷

B. AT&T's Call Study Is Reliable.

Halo also tries to question AT&T's call study showing that 74% of the calls Halo sends to AT&T are landline-originated.²⁸ This too is largely a red herring, ***for Halo never denies that at least some portion of the calls it sends to AT&T are originated by customers of landline***

cites are not only irrelevant (because it does not matter whether Transcom is an ESP), but also are all either vacated or unpublished (or both) and therefore carry no weight here. (The 2005 bankruptcy decision that Halo cites was published, but was later vacated by the district court, *AT&T Corp. v. Transcom Enhanced Services, LLC*, 2006 U.S. Dist. LEXIS 97000, at *14 (N.D. Tex. Jan. 20, 2006), and therefore has no preclusive or precedential effect.)

²⁵ Johnson Rebuttal at 12-13.

²⁶ *Palmerton*, 2011 WL 1259661 at 16-17.

²⁷ *See id.*

²⁸ *See* Wiseman Rebuttal at 7-10.

*carriers,*²⁹ *and sending any such calls breaches the ICA.* As Mr. Neinast's corrected Attachment MN-3 shows, on even a random sample of calls sent to AT&T by Halo, four out of five (80%) were landline-originated, as AT&T verified by examining the LERG and the national LNP database to determine the carrier that owns the originating number. Moreover, Halo's claim that one cannot rely on the Calling Party Number to tell where a call originated and what carrier served the originating caller³⁰ is absurd. The entire industry uses CPN to tell where and from what carrier calls originated, and carriers rely on that data to bill each other for calls.³¹ Moreover, AT&T did a thorough, multi-step analysis to ensure that calls were landline-originated, as Mr. Neinast explained.³² Finally, Halo's claim that a large portion of calls it sent to AT&T were actually IP-originated³³ means nothing, for IP-originated calls are still subject to the same intercarrier compensation rules as all other landline-originated calls.³⁴

II. HALO BREACHED THE ICA BY INSERTING FALSE CHARGE NUMBERS.

The ICA requires the parties to send each other accurate call detail information to allow proper billing.³⁵ The expectation is that the parties would do so by following industry norms and standards that were in place long before Halo got into business. These include not altering call detail information or inserting unauthorized information so as to disguise or misrepresent the true nature and jurisdiction of the call. Halo, however, has been breaching the ICA by

²⁹ See Wiseman Direct at 14.

³⁰ *Id.* at 16.

³¹ Neinast Rebuttal at 3.

³² Neinast Direct at 10-11.

³³ Wiseman Rebuttal at 8-9.

³⁴ *Connect America Order*, ¶ 957 (calls that originate or terminate "in IP," or have IP in the middle, are "subject to the access charge regime"). IP-originated calls from customers of landline carriers are landline calls and certainly are not wireless calls. Neinast Rebuttal at 6.

³⁵ ICA Section XIV.E (McPhee Direct, Att. JSM-1) requires Halo to provide many types of call detail information, including "charge number." It obviously breaches the ICA to insert false or misleading Charge Number information. ICA Section XIV.G requires Halo to provide AT&T with "proper call information." MCPhee Direct, Att. JSM-1. It obviously breaches the ICA to insert false or misleading call detail information.

sending AT&T false call detail information that Halo itself has inserted in order to misrepresent the true nature and jurisdiction of calls and avoid access charges.

The use of the Calling Party Number (“CPN”) to determine the long-distance or local jurisdiction of a call is discussed in the Background section above. As also discussed, in rare cases a Charge Number (“CN”) is included in the call detail record to indicate the number that will actually be financially responsible for the call. There are legitimate uses for CN, such as when a business wants all calls made by its employees in a particular office to be billed to a single number. Halo, however, is breaching the ICA and industry standards by manipulating CN for its own illegitimate purposes. Specifically, on all calls that Halo sends to AT&T, Halo inserts a Transcom CN on every call record, even though the end-user that originated the call is not aware Halo is doing this.³⁶ Because these CNs are always assigned to Transcom, and Transcom is always physically located next to Halo, the effect of this is to make every call that Halo sends to AT&T appear to be local (and thus avoid access charges), regardless of the where the call actually started.

There is no network, technical, or billing-related reason for doing this.³⁷ Halo tries to excuse its conduct by saying that Transcom “originates” all these calls and therefore is financially responsible for them,³⁸ but the idea that Transcom originates the calls is patently wrong, as shown above. Transcom has no relationship with any of the individuals who actually originate any of these calls and no reason – or authorization – to have Halo insert a CN to make Transcom financially responsible for these calls originated by strangers through their own

³⁶ Neinast Rebuttal at 5.

³⁷ *Id.* at 5, 8; Neinast Direct at 16.

³⁸ Wiseman Rebuttal at 15-16.

separate carriers. Rather, the only reason for Halo doing this is to disguise its traffic so that 100% of the traffic appears to both local and wireless. Halo's conduct is no different from putting Rolex labels on cheap watches and trying to pass them off as the real thing.

Recognizing it has no defense, Halo says it has now stopped inserting Transcom's CN on the traffic sent to AT&T.³⁹ But even if Halo does so, that does not absolve it for its prior material breaches of the ICA and failure to cure the breach when AT&T first sent a demand letter back in May 2011. Accordingly, there is still reason for the Authority to find a breach of the ICA and authorize AT&T to terminate that contract.

III. HALO IS BREACHING THE ICA BY REFUSING TO PAY FOR INTERCONNECTION FACILITIES IT OBTAINS FROM AT&T.

As noted earlier, Halo claims to be a wireless carrier and therefore entered into a wireless ICA. Under the ICA, Halo is to establish a point of interconnection ("POI") with AT&T. For the interconnection facility that carries traffic from Halo, through the POI, and on to the AT&T switch, the ICA uses a "shared facility factor" to determine how much each carrier will pay for the cost of that facility.⁴⁰ The factor is based on which carrier is terminating traffic to the other carrier's network.⁴¹ In the current case, 100% of the traffic between the parties is traffic that Halo terminates on AT&T's network. Accordingly, under the ICA's shared facility factor, Halo is responsible for 100% of the cost of the interconnection facility.⁴² AT&T has properly billed Halo for those costs, but Halo has refused to pay a single penny.

³⁹ Wiseman Direct at 30.

⁴⁰ ICA Sections V.B and I.C, quoted in Neinast Direct Testimony at 19 and included in McPhee Direct, Att. JSM-1. Because AT&T does not deliver any traffic to Halo, these ICA provisions make Halo responsible for 100% of the costs of the interconnection facilities it uses to connect with AT&T.

⁴¹ *Id.*

⁴² Halo says that it uses a third-party carrier to connect to the POI on its side of the POI. Under the shared-use approach of the ICA, however, Halo still owes AT&T for the portion of interconnection facilities on

Halo claims that it should only be responsible for the costs of the part of the facility between Halo's location and the POI and should not have to pay anything for the portion of the facility on AT&T's side of the POI. But that is not how interconnection between wireless carriers and ILECs works. It is true that when a *landline* CLEC interconnects with AT&T it typically pays only for the portion of an interconnection facility on the CLEC's side of the POI. Halo, however, purported to be a wireless carrier and adopted a wireless ICA. That ICA, like wireless ICAs in general, requires use of a shared facility factor, and because 100% of the traffic comes from Halo for termination for AT&T, Halo must pay 100% of the costs for the interconnection facilities it uses.

CONCLUSION

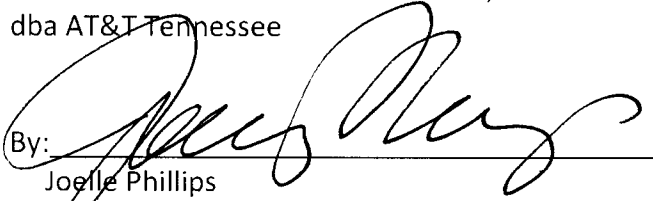
For the reasons stated herein and in AT&T's testimony, the Authority should enter an order ruling that:

1. Halo has materially breached its ICA with AT&T;
2. AT&T is authorized to terminate the ICA and cease accepting traffic from Halo; and
3. Halo is responsible to pay AT&T for access charges on the interstate and interLATA landline traffic it has sent to AT&T thus far and for the interconnection facilities it has obtained from AT&T.

AT&T's side of the POI, and those are the charges AT&T seeks to recover. The rates that apply for those charges were formerly set forth in AT&T's tariff A35 but now are set forth in its Tennessee Guidebooks and Service Agreements.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, LLC
dba AT&T Tennessee

By: 

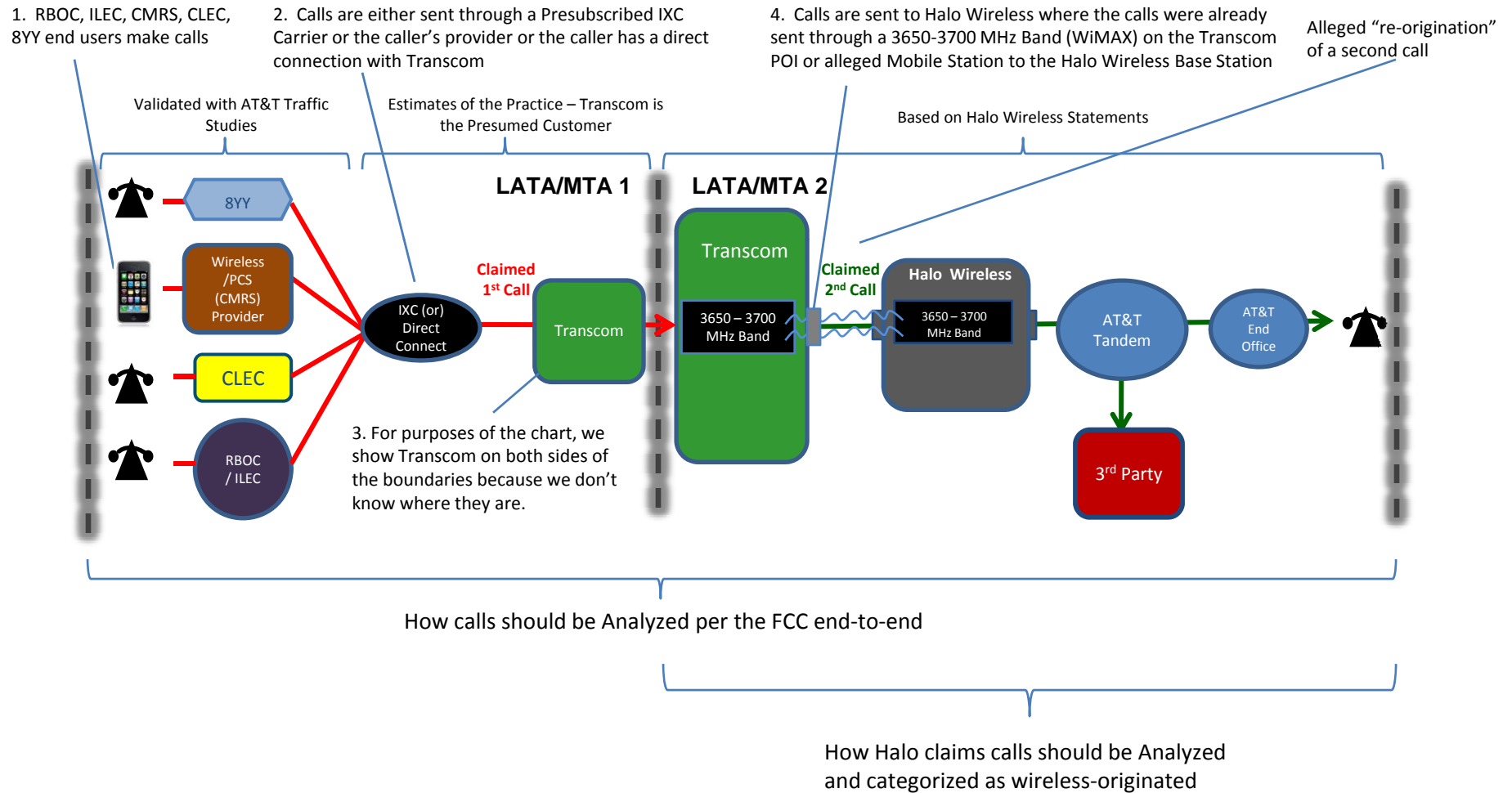
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Diagram of How Halo Sends Traffic To AT&T

Docket No. 11-00119

Attachment 1

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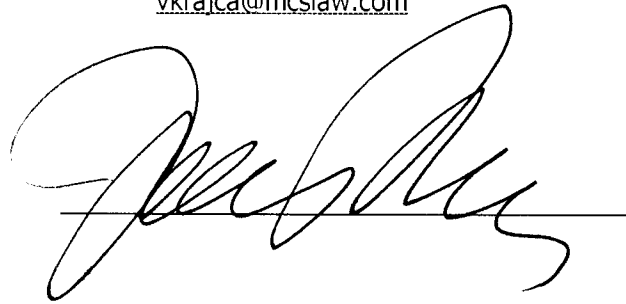


CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2012, a copy of the foregoing document was served on the following, via the method indicated:

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

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