BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Halo Wireless, Inc.,	)	
	)	
Complainant,	)	
v.	)	
	)	
Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company,	)	
Goodman Telephone Company, Granby Telephone Company, Iamo	)	
Telephone Company, Le-Ru Telephone Company, McDonald County	)	**File No: TC-2012-0331**
Telephone Company, Miller Telephone Company, Ozark Telephone	)	
Company, Rock Port Telephone Company, Seneca Telephone	)	
Company, Alma Communications Company, d/b/a Alma Telephone	)	
Company, Choctaw Telephone Company, MoKan Dial, Inc., Peace	)	
Valley Telephone Company, Inc., and Southwestern Bell Telephone	)	
Company, d/b/a AT&T Missouri,	)	
	)	
Respondents.	)	

REPORT AND ORDER

Issue Date: August 1, 2012

Effective Date: August 13, 2012

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Halo Wireless, Inc.,	)	
	)	
Complainant,	)	
v.	)	
	)	
Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Goodman Telephone Company, Granby Telephone Company, Iamo Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Alma Communications Company, d/b/a Alma Telephone Company, Choctaw Telephone Company, MoKan Dial, Inc., Peace Valley Telephone Company, Inc., and Southwestern Bell Telephone Company, d/b/a AT&T Missouri,	)	**File No: TC-2012-0331**
	)	
Respondents.	)	

REPORT AND ORDER

TABLE OF CONTENTS

APPEARANCES **4**

INTRODUCTION AND SUMMARY **6**

BACKGROUND AND PROCEDURAL HISTORY **7**

A. HISTORICAL BACKGROUND OF HALO DISPUTE 7
- *1. Prior Blocking of Halo Traffic* *7*
- *2. MoPSC Complaint Case Proceedings* *8*
- *3. Federal Court Proceedings in Missouri* *9*
- *4. Halo's Texas Bankruptcy Proceedings* *10*
- *5. Texas Bankruptcy Court Order and Fifth Circuit Opinion* *10*
- *6. FCC Connect America Fund Order* *11*

B. PROCEDURAL HISTORY AND TRAVEL OF THE INSTANT CASE 12
- *1. Halo Complaint to Dispute RLEC and AT&T Blocking Requests* *12*
- *2. AT&T Counterclaim* *14*
- *3. Evidence and Contested Hearing* *15*

FINDINGS OF FACT **16**

A. THE PARTIES 18
- *1. Halo* *18*
- *2. Transcom* *19*
- *3. AT&T Missouri* *20*

4. RLEC Respondents *20*
5. The Office of the Public Counsel *20*
6. Commission Staff *21*
B. HALO AND TRANSCOM'S ACTIVITIES 21
1. Transcom *21*
2. Halo's ICA with AT&T Missouri *21*
3. Halo's ICA Amendment *22*
4. Halo Agreements with AT&T ILEC Affiliates in Other States *22*
C. TRAFFIC BEING DELIVERED BY HALO AND TRANSCOM IN MISSOURI 23
1. Transcom's Involvement in the Calls *24*
2. Halo's Use of LEC-to-LEC Network *25*
3. AT&T and RLEC Traffic Studies *26*
4. Halo Traffic Included Landline-Originated and InterLATA Calls *28*
D. HALO WAS BILLED BY THE RLEC RESPONDENTS BUT DID NOT PAY 29
E. HALO HAS NOT PAID AT&T THE APPROPRIATE RATE 30
F. ORIGINATING CALLER INFORMATION VIOLATION 31
G. AT&T AND RLEC BLOCKING REQUESTS RELIED ON VALID VIOLATIONS 32

CONCLUSIONS OF LAW **33**

A. THE COMMISSION'S JURISDICTION AND BURDEN OF PROOF 33
B. AT&T MISSOURI'S COUNTERCLAIM AND ICA COMPLAINT 35
1. Halo Has Delivered Traffic to AT&T Missouri That Was Not "Originated through Wireless Transmitting and Receiving Facilities" as Provided by the Parties' ICA *35*
2. Halo Has Not Paid the Appropriate Compensation to AT&T Missouri as Prescribed by the Parties' ICA. Access Compensation Applies to Halo's Traffic *46*
3. Halo Has Committed a Material Breach of Its ICA with AT&T Missouri, so AT&T Missouri Is Entitled to Discontinue Performance under the ICA *50*
C. BLOCKING UNDER THE MISSOURI ERE RULE 52
1. The Missouri ERE Rule Applies to Halo's Traffic *52*
2. Halo Has Placed InterLATA Wireline Telecommunications Traffic on the LEC-to-LEC Network *60*
3. Halo Has Failed To Compensate the RLEC Respondents for Traffic it is Delivering to Them for Termination Pursuant to Halo's Interconnection Agreement with AT&T Missouri *60*
4. Halo Did Not Deliver Appropriate Originating Caller Identification *62*
5. Blocking of Halo's Traffic in Accordance with the ERE Rules *64*
6. No Claim or Finding of Fraud *65*
D. ALMA ET AL.'S ICA COMPLAINT 67

FINAL DECISION **68**

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[1] The Craw-Kan Respondents include: Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Goodman Telephone Company, Granby Telephone Company, Iamo Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, and Peace Valley Telephone Company, Inc.

[2] On June 22, 2012, Public Counsel filed its position statement and requested to be excused from the evidentiary hearing. That request was granted that same day. See EFIS Docket Entry No. 94, *Order*

APPEARING FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Colleen M. Dale, Senior Counsel, and **Meghan McClowry**, Legal Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Harold Stearley, Deputy Chief Regulatory Law Judge

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Granting the Office of the Public Counsel's Motion to be Excused, issued June 22, 2012. EFIS is the Commission's Electronic Information and Filing System.

INTRODUCTION AND SUMMARY

This is a complaint case filed by Halo Wireless, Inc. ("Halo") against the Respondent local exchange telecommunications carriers ("LECs") providing local and exchange access service in the state of Missouri. The Respondents sought to block Halo's telecommunications traffic under the Missouri Public Service Commission's Enhanced Record Exchange (ERE) Rule upon allegations of three independent violations of the ERE Rule: (1) non-payment for compensable traffic, (2) improper delivery of interLATA wireline[3] traffic over the LEC-to-LEC network; and/or (3) failure to provide appropriate originating caller identification information. Halo's complaint seeks to prohibit the Respondents from blocking Halo's traffic under the ERE Rule.

As a part of its response to Halo's complaint, AT&T Missouri filed a counterclaim seeking to cease performance under its interconnection agreement ("ICA") with Halo, and thus in effect to block Halo's traffic, because Halo allegedly materially breached the terms of that agreement by delivering landline traffic. AT&T Missouri also seeks a finding that Halo is liable to AT&T Missouri for access charges on the interexchange landline traffic that Halo delivered to AT&T Missouri for termination to AT&T Missouri's end user customers.

This case was also consolidated solely for purposes of hearing with a complaint case, File No. TO-2012-0035, filed by a group of small rural LECs including Alma Telephone, et al.[4] seeking a Commission ruling that the effect of Halo's ICA with AT&T Missouri on other Missouri carriers is discriminatory and contrary to the public interest.

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[3] In this order, the terms "wireline" and "landline" traffic will be used interchangeably to describe calls that are both originated and terminated by landline customers. "Wireless traffic" describes calls that are originated by a wireless customer and terminated to a landline customer.

[4] The Alma Respondents include: Alma Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial, Inc.

In this order, the Commission finds and concludes that Halo has committed a material breach of the ICA with AT&T Missouri by delivering substantial amounts of landline-originated traffic and therefore authorizes and directs AT&T Missouri to immediately cease performance under the ICA with Halo. In addition, Halo is liable to AT&T Missouri for access charges on the interexchange landline traffic that Halo delivered to AT&T Missouri and that AT&T Missouri delivered to its end user customers.

The Commission also finds and concludes that Halo has violated the ERE Rule by: (1) failing to pay or, in AT&T Missouri's case, substantially underpaying the Respondents for compensable traffic, (2) improperly delivering interLATA wireline traffic over the LEC-to-LEC network; and (3) failing to provide appropriate originating caller identification information. Accordingly, this order authorizes and directs the Respondents to immediately begin blocking Halo's traffic pursuant to the ERE Rule.

Because this order grants the relief requested by the RLEC Respondents,[5] at this time the Commission does not need to address Alma, et al.'s claims in File No. TO-2012-0035 that the effect of Halo's ICA with AT&T Missouri has been discriminatory and contrary to the public interest.

BACKGROUND AND PROCEDURAL HISTORY

A. Historical Background of Halo Dispute

1. Prior Blocking of Halo Traffic

In late 2010 and early 2011, small rural LECs ("RLECs") in Missouri became aware that Halo was delivering what appeared to be landline-originated interexchange calls to their exchanges over the LEC-to-LEC network without an approved agreement and without

[5] The RLEC Respondents include both the Craw-Kan Respondents and the Alma Respondents. See Footnotes 1 and 4, *supra*.

paying the Commission-approved tariff rates for such calls.[6] Although Halo claimed that all of its traffic was intraMTA wireless traffic, another group of Missouri RLECs were suspicious of this claim because the amount of traffic Halo was delivering was disproportionately large for a new wireless carrier when compared to the amount of traffic they were receiving from established, national wireless carriers.

Several Missouri RLECs undertook their own analysis of Halo's traffic and found that a substantial portion of the traffic appeared to be landline-originated interexchange traffic.[7] Given the nature of this traffic and Halo's refusal to enter into negotiations to establish an interconnection agreement, in February of 2011 these Missouri RLECs commenced the blocking process for Halo's traffic under the ERE Rule for non-payment.[8] At that time, Halo filed a request with the FCC to address the blocking on an expedited resolution docket, but the FCC declined.[9] As a result, numerous other small RLECs blocked Halo's traffic in 2011 pursuant to the ERE Rule with the assistance of AT&T Missouri.[10]

2. MoPSC Complaint Case Proceedings

In June of 2011, nearly all of Missouri's small RLECs filed two complaint cases against Halo with the Commission. Among other things, those complaint cases sought a determination that Halo's traffic was subject to the appropriate intrastate access rates and

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[6] EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Direct Testimony Loges, p. 4; EFIS Docket Entry No.222, Alma et al Exhibit 1, Direct Testimony Molina, p. 5; EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit No. 1, pp. 4-7.

[7] EFIS Appeal Case No. AP11-00682, U.S. District Court for the Western District of Missouri, *Halo Wireless, Inc. v. Citizens Telephone Company of Higginsville, Missouri, et al*., Docket Entry No. 1, Exhibit 12, pp. 2-3.

[8] EFIS Docket Entry No. 223, Alma et al Exhibit 2, Direct Testimony Loges, p. 7; EFIS Docket Entry No. 222, Alma et al. Exhibit 1, Direct Testimony Molina, p. 8.

[9] EFIS Appeal Case No. AP11-00682, *Halo Wireless, Inc. v. Citizens Telephone Company of Higginsville, Missouri, et al*., Docket Entry No. 60, Suggestions in Support of Defendants Citizens Telephone Company of Higginsville, Missouri et al.'s Motion to Abstain or Dismiss, Attachment A, Letter from FCC Enforcement Bureau, dated June 6, 2011.

[10] *Id.*

the blocking provisions of the ERE Rule. The Commission dismissed those two cases without prejudice after Halo filed the instant complaint case. [11]

Alma et al. also filed a complaint case seeking a determination by the Commission that the transit provisions in Halo's ICA with AT&T Missouri were discriminatory and contrary to the public interest because they allowed Halo to use rural network facilities without an agreement or compensation arrangements. Craw-Kan et al. intervened in the case, designated as TO-2012-0035, which was consolidated with the instant case solely for purposes of hearing.

3. Federal Court Proceedings in Missouri

In response to the RLECs' Commission complaint cases, Halo filed two lawsuits against the RLECs in the United States District Court for the Western District of Missouri. On July 11, 2011, Halo filed the first federal lawsuit seeking a declaratory judgment that the issues related to Halo's activities and operations were within the exclusive jurisdiction of the FCC. Halo's lawsuit sought injunctive relief to prevent the Missouri RLECs from pursuing their claims before this Commission rather than the FCC. Halo's lawsuit was followed on August 11, 2011 by Halo's Suggestions of Bankruptcy and Notice of Stay. The RLECs filed their motions to dismiss on August 19, 2011. On August 22, 2011, Judge Gaitan issued an *Order* ruling that the case was not stayed by Halo's Bankruptcy because the Code's automatic stay does not apply to judicial proceedings, such as Halo's suit, "that were initiated by the debtor."[12] On September 6, 2011, shortly after Judge Gaitan's order was issued, Halo filed a notice of dismissal.

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[11] *Alma Tel. et al. v. Halo Wireless, Inc*., File No. IC-2011-0385 and *BPS Tel. et al. v. Halo Wireless, Inc*., File No. TC-2011-0404, *Order Dismissing Complaints without Prejudice,* issued April 25, 2012.

[12] EFIS Docket Entry No. 150, *Halo Wireless v. Citizens Telephone Co. of Higginsville, Mo. et al.*, Case No. 11-cv-00682, *Order*, p. 1.

On August 28, 2011, Halo filed notices of removal of the Missouri RLECs' Commission complaint cases to the Western District of Missouri in Case Nos. 11-cv-04218, 11-cv-04220, and 11-cv-04221. The RLECs filed motions to remand the cases to the Commission which were granted by Judge Laughrey on December 21, 2011. Judge Laughrey's *Orders* stated:

> The Commission has the authority to regulate the subject matter of this dispute, and the Court does not have jurisdiction over Plaintiff's claims until the Commission has rendered a decision for the Court to review. To the extent Defendant argues that Plaintiff's claims should first be decided by the FCC, this argument is mooted by the FCC's recent rulemaking decision rejecting Defendant's position and reaffirming that the power to regulate these issues lies with state agencies.[13]

4. Halo's Texas Bankruptcy Proceedings

On August 8, 2011, Halo filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Eastern District of Texas ("Texas Bankruptcy Court").[14] In the Texas Bankruptcy case, Halo sought a ruling that the multiple state public utility commission complaint proceedings against Halo were stayed by the bankruptcy proceedings. Halo also sought to transfer the Missouri Commission complaint proceedings to the Texas Bankruptcy Court and have them heard in a central adversary proceeding.

5. Texas Bankruptcy Court Order and Fifth Circuit Opinion

AT&T Missouri and the Missouri RLECs, along with many other similarly situated telephone companies, sought a ruling from the Texas Bankruptcy Court that proceedings before numerous state public utility regulatory commissions were not stayed by Halo's bankruptcy filing. The Texas Bankruptcy Court held an initial hearing on September 30, 2011, and it then made its findings of fact and conclusions of law on the record on October

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[13] EFIS Docket Entry No. 151, *BPS Telephone et al. v. Halo Wireless*, Case No. 11-cv-04220, *Order*.

[14] On July 19, 2012, the Texas Bankruptcy Court issued its *Order Converting Halo's Chapter 11 Case to Case under Chapter 7 of the Bankruptcy Code*. *See* EFIS Docket Entry No. 237.

7, 2011. The Texas bankruptcy court denied Halo's request and issued a ruling that the state public utility commission proceedings could continue under the regulatory power and proceedings exception to the bankruptcy code. Specifically, the bankruptcy court ruled that all state regulatory commission proceedings were excepted from the automatic stay under § 362(b)(4). The bankruptcy court then incorporated its findings of fact and conclusions of law in Stay Exception Orders entered on October 26, 2011, which Halo appealed on that same day.[15]

On June 18, 2012, the United States Court of Appeals for the Fifth Circuit affirmed the Texas Bankruptcy Court's ruling that the numerous actions involving Halo pending before state public utility regulatory commissions could move forward. The Fifth Circuit stated:

> A fundamental policy behind the police or regulatory power exception . . . is to prevent the bankruptcy court from becoming a haven for wrongdoers. . . . If Halo is permitted to stay all of the PUC proceedings, it will have used its bankruptcy filing to avoid the potential consequences of a business model it freely chose and pursued.[16]

Thus, the Fifth Circuit concluded that the Texas Bankruptcy Court's finding that the state commission actions were continued by governmental units was consistent with the statutory language of § 362(b)(4), and was in keeping with the policy for the exception. The Fifth Circuit also observed that the PUC proceedings were being used to enforce the police and regulatory power of the states.

6. FCC Connect America Fund Order

After receiving numerous written comments and several *ex parte* presentations from

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[15] EFIS Docket Entry No. 83, *In the Matter of Halo Wireless, Inc. v. Alenco Communications et al.*, United States Court of Appeals for the Fifth Circuit Case No. 12-40122, *Opinion*, pp. 5-6.

[16] EFIS Docket Entry No 83, *In the Matter of Halo Wireless, Inc. v. Alenco Communications et al.*, United States Court of Appeals for the Fifth Circuit Case No. 12-40122, *Opinion*, p. 26 (citations and quotations omitted).

Halo and many LECs, the Federal Communications Commission's (FCC) November 18, 2011 *Connect America Fund Order*[17] rejected Halo's arguments and found that Halo's practices did not convert landline calls into something else. Specifically, the FCC held, "[T]he 're-origination' of a call over a wireless link in the middle of a 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."[18] Rather, the FCC clarified that the originating caller remains the appropriate reference point for purposes of intercarrier compensation, and Halo's arrangement did not transform the nature of the calls. Thus, the FCC expressly rejected Halo's "wireless-in-the middle" argument.[19]

B. Procedural History and Travel of the Instant Case

1. Halo Complaint to Dispute RLEC and AT&T Blocking Requests

In February and March of 2012, the RLEC Respondents notified Halo that Halo's traffic would be blocked pursuant to the Commission's Enhanced Record Exchange (ERE) Rule due to Halo's failure to pay for compensable traffic being delivered over the LEC-to-LEC network, improper delivery of interLATA wireline traffic over the LEC-to-LEC network, and/or failure to include appropriate originating caller identification. The RLEC Respondents also notified the Commission's Telecommunications Department as required by the ERE Rule and sought assistance from AT&T Missouri in implementing the block.[20] Subsequently, AT&T Missouri also notified Halo that AT&T Missouri would begin blocking

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[17] *In the Matter of the Connect America Fund*, WC Docket No. 10-90 et al., *Report and Order*, released Nov. 18, 2011.

[18] *Id*. at ¶1006.

[19] Halo appealed the FCC's *Order* as part of a consolidated proceeding in the United States Court of Appeals for the Tenth Circuit, but the FCC's *Order* as it relates to Halo has not been stayed.

[20] *See* EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit 1, Wilbert Direct, p. 7 and Ex. 6. EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Loges Direct Testimony, Alma Attachments A and B; EFIS Docket Entry No. 222, Alma et al. Exhibit 1, Molina Direct Testimony, Choctaw Attachments A and B, MoKan Attachments A and B.

Halo's traffic pursuant to the ERE Rule due to Halo's failure to pay AT&T Missouri the appropriate rate for its landline-originated traffic.[21] Both the RLEC Respondents and AT&T Missouri notified Halo of Halo's right to contest the blocks by filing a complaint with the Commission pursuant to the ERE Rule.

On April 2, 2012, Halo filed a complaint pursuant to the ERE Rules in response to the traffic blocking requests made by the RLEC Respondents and AT&T Missouri. Halo's complaint sought alternative forms of relief, the first of which was to stay the complaint proceeding until the Texas Bankruptcy Court ruled on the propriety of the blocking notices. Halo also contested, on numerous grounds, the propriety of the blocking notices as well as the Commission's authority to issue relief pursuant to the ERE Rules. Halo also requested expedited consideration of its complaint by the Commission.[22]

On April 3, 2012, the Commission issued an order giving notice of a contested case and directing expedited responses to Halo's request for a stay.[23] Also on April 3, 2012, AT&T Missouri filed notice that it had ceased its blocking preparations pending the Commission's decision in this case.[24]

On April 11, 2012, the Commission issued an order denying Halo's request to stay the proceedings pending resolution of issues before the Texas Bankruptcy Court. The Commission concluded that proceedings before state public utility commissions had not been stayed by the bankruptcy proceedings. The Commission observed that while Halo's bankruptcy may prevent the RLEC Respondents from ever being compensated for Halo's pre-bankruptcy traffic, bankruptcy law does not allow Halo to continue: (a) receiving service

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[21] EFIS Docket Entry No. 1, Halo April 2, 2012 Complaint, Exhibits A through D.

[22] EFIS Docket Entry No. 1.

[23] EFIS Docket Entry No. 3.

[24] EFIS Docket Entry No. 2.

and using RLEC Respondents' Missouri networks without payment, or (b) violating the Commission's ERE Rule.[25] The Commission also noted that the plain language of the bankruptcy code makes clear that the automatic stay does not apply to judicial proceedings initiated by the debtor.[26]

On May 1, 2012, the RLEC Respondents jointly filed a motion to consolidate this action with File Number TO-2012-0035, a complaint case filed by Alma, et al. seeking a determination that the ICA between AT&T and Halo was discriminatory and contrary to the public interest, which had been held in abeyance. On May 2, 2012, Craw-Kan, et al. filed a motion to dismiss, suggesting that Halo could not maintain its suit under Missouri law because Halo had failed to maintain its Certificate of Authority as a Foreign Corporation to operate in Missouri. On May 17, 2012, the Commission issued an order denying Craw-Kan et al.'s motion to dismiss Halo's complaint. The Commission's order granted the RLEC Respondents' motion to consolidate File Number TC-2012-0331 with File Number TO-2012-0035. Accordingly, the Commission reactivated File Number TO-2012-0035 and designated File Number TC-2012-0331 as the lead case.[27]

2. AT&T Counterclaim

AT&T Missouri filed an answer and counterclaim to Halo's complaint which included a formal complaint and request for declaratory ruling seeking an order excusing AT&T Missouri from further performance under its wireless ICA with Halo, based on Halo's material breaches of the ICA. AT&T Missouri alleged that the ICA does not authorize Halo to send AT&T Missouri traffic that does not originate on a wireless network. AT&T Missouri further alleged that Halo breached and is breaching the ICA by sending large volumes of

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[25] EFIS Docket Entry No. 30, p. 6.

[26] EFIS Docket Entry No. 30, p. 6.

[27] EFIS Docket Entry No. 55.

traffic that does not originate on a wireless network, in furtherance of an access charge avoidance scheme; and by failing to provide AT&T Missouri proper call information to allow AT&T to bill Halo for the termination of Halo's traffic. AT&T Missouri also sought an order finding that Halo owes AT&T Missouri the applicable access charges for the non-local landline traffic Halo has sent to AT&T Missouri (without determining any specific amount due).[28]

Halo responded with a motion to dismiss AT&T Missouri's counterclaim.[29] On May 17, 2012, the Commission issued an order denying Halo's motion to dismiss AT&T Missouri's counterclaim.[30]

3. Evidence and Contested Hearing

Halo, the RLEC Respondents, AT&T Missouri, and the Commission Staff ("Staff") all filed written testimony, and all parties except Halo filed an agreed issues list, list of witnesses, and order of cross-examination on June 21, 2012.[31] Halo filed its separate list of issues on June 22, 2012,[32] and all of the parties filed position statements on that same date.[33] On June 25, 2012, Halo filed objections and moved to strike substantial portions of the testimony filed by the witnesses for AT&T Missouri, the Respondent RLECs, and Staff. The evidentiary hearing was conducted on June 26-27, 2012.[34] Ultimately, Halo's

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[28] EFIS Docket Entry No. 45, *AT&T Missouri's Answer, Affirmative Defenses, Counterclaim and Motion for Expedited Treatment*, filed May 2, 2012.

[29] EFIS Docket Entry No. 52.

[30] EFIS Docket Entry No. 55.

[31] EFIS Docket Entry No. 87.

[32] EFIS Docket Entry No. 90.

[33] EFIS Docket Entry Nos. 92-93 and 95-97.

[34] Transcript, Volumes 2 through 5. In total, the Commission admitted the testimony of 17 witnesses and received 29 exhibits into evidence. Proposed findings of fact were filed on July 23, 2012. Reply Briefs were filed on July 30, 2012, and the case was deemed submitted for Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration after the

objections to the other parties' testimony were overruled and its motions to strike were denied by the Commission on July 9, 2012.[35]

The post-hearing procedural schedule required the parties to file proposed orders with proposed findings of fact and proposed conclusions of law no later than July 23, 2012. On July 23, 2012, local counsel for Halo, Daniel Young, on behalf of himself and his colleague Louis Huber, notified the Regulatory Law Judge ("RLJ"), that he was not authorized by his client to proceed with the required filing. None of Halo's other attorneys made a filing on Halo's behalf or contacted the RLJ. And none of Halo's attorneys sought an extension of time, nor have they sought leave to withdraw. Halo did not avail itself of the opportunity to present additional argument to the Commission. The RLJ issued a notice with regard to Halo's failure to comply with this deadline. That notice will be attached to this order as Attachment A.

The final post-hearing procedural deadline was the deadline of July 30, 2012 for the filing of reply briefs. Halo did not file a reply brief, and because Halo had not filed a proposed order on July 23, 2012, the Respondents had no reason to file a reply brief.

FINDINGS OF FACT

An administrative agency, as fact-finder, receives deference when choosing between conflicting evidence.[36] In fact, the Commission "may disregard and disbelieve

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recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

[35] EFIS Docket Entry No. 210.

[36] *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

evidence which in its judgment is not credible even though there is no countervailing evidence to dispute or contradict it."[37]

Appellate courts must defer to the expertise of an administrative agency when reaching decisions based on technical and scientific data.[38] And an agency has reasonable latitude concerning what methods and procedures to adopt in carrying out its statutory obligations.[39] Consequently, it is the agency that decides what methods of expert analysis are acceptable, proper, and credible while satisfying its fact-finding mission to ensure the evidentiary record, as a whole, is replete with competent and substantial evidence to support its decisions.[40]

Additionally, the Commission is entitled to interpret any of its own orders in prior cases as they may relate to the present matter.[41] When interpreting its own orders, and ascribing a proper meaning to them, the Commission is not acting judicially, but rather as a fact-finding agency.[42] Consequently, factual determinations made with regard to the Commission's prior orders receive the same deference shown in relation to all of the Commission's findings of fact. Indeed, even where there are mixed questions of law and

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[37] *Veal v. Leimkuehler* , 249 S.W.2d 491, 496 (Mo. App. 1952), citing to *State ex rel. Rice v. Public Service Commission*, 359 Mo. 109, 116-117, 220 S.W.2d 61, 65 (Mo. banc 1949).

[38] *Citizens for Rural Preservation, Inc. v. Robinett*, 648 S.W.2d 117, 128 (Mo. App. 1982), citing to *Smithkline Corp. v. FDA,* 587 F.2d 1107, 1118 (D.C.Cir.1978); *Cayman Turtle Farm, Ltd. v. Andrus,* 478 F.Supp. 125, 131 (D.C.Cir.1979).

[39] *Id.* citing to *Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm'n,* 539 F.2d 824, 838 (2d Cir.1976), *vacated for mootness,* 434 U.S. 1030, 98 S.Ct. 759, 54 L.Ed.2d 777 (1978).

[40] *Id*.

[41] *State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri*, 610 S.W.2d 96, 100 (Mo. App. 1980). *State ex rel. Missouri Pacific Freight Transport Co. v. Public Service Commission*, 312 S.W.2d 363, 368 (Mo. App. 1958); *State ex rel. Orscheln Bros. Truck Lines v. Public Service Commission*, 110 S.W.2d 364, 366 (1937).

[42] *Id*.

fact, a reviewing court views the evidence in the light most favorable to the Commission's decision.[43]

Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony.[44] The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each and every portion of that witness's testimony. The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise and credibility demonstrated with regard to that specific testimony. Any finding of fact reflecting the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

Bearing these evidentiary principles in mind, the Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

A. The Parties

1. Halo

Complainant, Halo Wireless, Inc., is a Texas corporation with its principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas Texas 75220.[45] Halo holds a Radio Station Authorization granted by the FCC on January 27, 2009 providing a

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[43] *State ex rel. Coffman v. Pub. Serv. Comm'n*, 121 S.W.3d 534, 541-542 (Mo. App. 2003). See also *State ex rel. Inter-City Beverage Co., v. Mo. Pub. Serv. Comm'n*, 972 S.W.2d 397, 401 (Mo. App. 1998).

[44] *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

[45] EFIS Docket Entry No. 1, *Halo Wireless, Inc.'s Formal Complaint in Response to Blocking Notices*, filed April 2, 2012.

nationwide, non-exclusive license qualifying Halo "to register individual fixed and base stations for wireless operations in the 3650-3700 MHz band."[46]

Halo was originally granted a certificate of authority to transact business as a foreign corporation in the State of Missouri by the Missouri Secretary of State on January 29, 2010. Halo's certificate of authority was administratively dissolved by the Secretary of State on August 25, 2010, for failure to file an annual report. Halo filed an Application for Reinstatement with the Secretary of State with the required Certificate of Tax Clearance from the Missouri Department of Revenue, Halo's Annual Registration reports for 2010, 2011, and 2012, and the required rescission fee.[47] The Secretary of State issued a Certificate rescinding the administrative dissolution on June 1, 2012.[48]

2. Transcom

Transcom Enhanced Services, Inc. ("Transcom") is a Texas corporation, with headquarters in Fort Worth, Texas. Transcom and Halo have "overlapping" ownership, with Scott Birdwell, the CEO, chairman and largest single individual owner of Transcom owning 50% of Halo. Russell Wiseman, the president of Halo, reports to a management committee of investor owners consisting of Scott Birdwell, Jeff Miller and Carolyn Malone. Mr. Miller and Ms. Malone serve as CFO and Secretary/Treasurer, respectively, of both Transcom and Halo.[49] Transcom is Halo's only paying customer and the source of 100% of Halo's revenues nationwide.[50]

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[46] EFIS Docket Entry No. 196, Halo Exhibit 2A; Halo Exhibit A, Wiseman Direct, p. 28.

[47] EFIS Docket Entry No. 50, Halo Opposition to Craw-Kan Telephone et al.'s Motion to Dismiss the First Amended Complaint, filed May 11, 2012 at para. 2 and Ex. A.

[48] EFIS Docket Entry No. 82, Halo Notice of Filing of Certificate of Rescission, filed June 20, 2012.

[49] EFIS Docket Entry No. 72, Halo Exhibit A, Wiseman Direct, p. 8. EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, p. 10.

[50] EFIS Docket Entry No. 72, Halo Exhibit A, Wiseman Direct, p. 48. EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, p. 8.

3. AT&T Missouri

Respondent Southwestern Bell Telephone Company, d/b/a AT&T Missouri is an incumbent local exchange carrier ("ILEC") as defined in 47 U.S.C. § 251(h) with offices at 909 Chestnut Street, St. Louis, Missouri, 63101. AT&T Missouri is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri, as each of those phrases is defined in Section 386.020, RSMo 2000 in accordance with tariffs on file with and approved by the Commission.[51]

4. RLEC Respondents

Respondents Craw-Kan et al. and Alma et al. are all incumbent local exchange "telecommunications companies" providing "basic local telecommunications services" and "exchange access services," as those terms are defined by §386.020 RSMo, to customers located in their service areas pursuant to a certificates of service authority issued by the Commission and tariffs on file with and approved by the Commission.

5. The Office of the Public Counsel

The Office of Public Counsel ("Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."[52] Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."[53]

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[51] Following its June 26, 2007, Order in Case No. TO-2002-185 allowing Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, to alter its status from a Texas limited partnership to a Missouri corporation, the Commission approved tariff revisions to reflect the new corporate name, Southwestern Bell Telephone Company d/b/a AT&T Missouri. *See, Order Granting Expedited Treatment and Approving Tariffs*, Case No. TO-2002-185, issued June 29, 2007.

[52] Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(15) and 2.040(2).

[53] Section 386.710(3), RSMo 2000.

6. Commission Staff

The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[54]

B. Halo and Transcom's Activities

1. Transcom

Transcom is a very high volume "least cost router" operating in the middle of long distance calls offering wholesale transport and termination using the cheapest available routing. Until recently, its company website represented its "core service offering" as "voice termination service," (which is the intermediate routing of telephone calls between carriers for termination to the carrier serving the called party) and stated that Transcom terminates "nearly one billion minutes per month." Transcom operates switches (or "data centers") in Dallas, New York, Atlanta and Los Angeles, where it accepts traditional circuit-switched traffic in Time Division Multiplexing ("TDM") format and in Internet Protocol ("IP") format. Transcom provides service to the largest Cable Multiple System Operators ("Cable/MSOs"), competitive LECs ("CLECs"), broadband service providers, and wireless carriers.[55]

2. Halo's ICA with AT&T Missouri

In June of 2010, Halo "opted-in"[56] to an existing ICA between AT&T Missouri and VoiceStream (now known as T-Mobile), which was filed with the Commission under VT-2010-0029. The Commission had previously approved the ICA in Case No. TO-2001-

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[54] Commission Rules 4 CSR 240-2.010(10), (21) and 2.040(1).

[55] EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, pp. 8-11. A copy of Transcom's webpage is filed under EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, Schedule JSM-3.

[56] Halo adopted the T-Mobile agreement as a most favored nation ("MFN") ICA pursuant to Section 252(i) of the Telecommunications Act of 1996.

489.[57] Pursuant to 4 CSR 240-3.513(4), Halo's adoption of the T-Mobile agreement was deemed approved upon its submission to the Commission.

There is also a provision in Halo's ICA with AT&T Missouri that allows Halo to transit traffic through AT&T Missouri for termination to Third Party Providers, such as RLEC Respondents. This "transit" provision provides in relevant part as follows:

> Carrier and SWBT shall compensate each other for traffic that transits their respective systems to any Third Party Provider . . . The Parties agree to enter into their own agreements with Third Party Providers.[58]

In Missouri, Halo has not entered into any agreements with RLEC Respondents for the traffic it transits through AT&T Missouri for termination to the RLEC Respondents.[59]

3. Halo's ICA Amendment

At the time Halo and AT&T Missouri executed the ICA, they also executed an amendment to the ICA which expressly limited Halo to sending only wireless-originated traffic to AT&T Missouri.

> 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.[60]

The Commission approved the Amendment on August 19, 2010 in Case No. IK-2010-0384.

4. Halo Agreements with AT&T ILEC Affiliates in Other States

Similar ICAs were adopted by Halo throughout most of the AT&T multi-state ILEC

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[57] EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, pp. 12-13. A copy of the AT&T/T-Mobile USA ICA and the Halo/AT&T MFN ICA are filed under EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, Schedule JSM-4.

[58] AT&T/Halo Interconnection Agreement, Section 3.1.3.

[59] *See* EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit 1, Wilbert Direct, p. 3.

[60] A copy of the Amendment to the Halo/AT&T MFN ICA is filed under EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, Schedule JSM-5, para. 1. (Emphasis added).

footprint. After the adoption of these agreements, it became evident to AT&T that Halo was sending landline traffic to AT&T Missouri as well as AT&T Missouri's affiliates in other states.[61] As a result, the AT&T affiliates in other states filed complaint cases against Halo with numerous state public utility commissions seeking to excuse those AT&T affiliates from further performance under the agreements with Halo due to Halo's material breaches.[62] Four of those state commissions have now rendered decisions, and all four (Georgia, South Carolina, Tennessee and Wisconsin) ruled in favor of the AT&T ILEC complainants, concluding that Halo breached its interconnection agreements with AT&T by delivering traffic to AT&T that is not wireless-originated and authorizing the AT&T affiliates to discontinue service to Halo. In addition, all four commissions ruled that Halo is liable for access charges on the non-local landline traffic Halo delivered to AT&T affiliates.[63]

C. Traffic Being Delivered by Halo and Transcom in Missouri

Transcom and Halo are operating in concert. Transcom is a very high-volume "least-cost router" operating in the middle of long distance calls. It aggregates third-party long distance traffic by selling its "voice termination service" and then hands the traffic off to Halo, which claims the traffic is wireless-originated intraMTA traffic.[64]

Transcom and Halo both have equipment at tower sites in Junction City, Kansas and Wentzville, Missouri, from which traffic is delivered for termination to AT&T Missouri and the RLEC Respondents.[65] Every call that comes to Halo for termination in Missouri first passes

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[61] *See* EFIS Docket Entry No. 219, AT&T Exhibit 3, Mark Neinast Direct, pp. 10, 13-14 and Schedules MN-4 and 5.

[62] EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, pp. 2-3.

[63] *See* EFIS Docket Entry No. 153, *Tennessee Halo Order*, at 22; EFIS Docket Entry No. 236, *Georgia Halo Order* at 15 and *South Carolina Halo Order* at 27. The Public Service Commission of Wisconsin has not yet issued its written order.

[64] EFIS Docket Entry No. 66, AT&T Exhibit 1, McPhee Direct, p. 11.

[65] EFIS Docket Entry No. 75, AT&T Rebuttal Testimony Drause, pp. 4-8.

from the carrier whose end-user originated the call to Transcom (typically, indirectly through intermediate carriers) at one of its four switching stations (or data centers) in Dallas, New York, Atlanta, and Los Angeles.[66] Transcom then sends the call to its equipment at the tower site where Transcom then transmits the call, wirelessly, for about 150 feet to Halo's equipment.[67] Halo then sends the call on to AT&T Missouri's tandem switch for termination to an AT&T Missouri end-user or to be passed on to third party carriers, such as RLEC Respondents, for termination.[68] There is no technical reason for the 150 foot length between Transcom and Halo to be wireless. The same connection could be made much less expensively by using a short "CAT-5" cable, and using a cable would increase service reliability.[69]

For traffic that Transcom passes to Halo, Transcom does not originate the call (the calling party does), Transcom does not decide who will be called (the calling party does), and Transcom does not provide voice content that the calling and called parties exchange on the call. Transcom's equipment is not capable of originating a call; it simply converts IP data into a radio signal.[70]

1. Transcom's Involvement in the Calls

Transcom does not alter or add to the content of any call. The calling and called parties say their own words and that is all that gets transmitted. Transcom only tries to make the voice communications more clear by suppressing background noise and adding

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[66] EFIS Docket Entry No. 75, AT&T Rebuttal Testimony Drause, p 6.

[67] EFIS Docket Entry No. 75, AT&T Rebuttal Testimony Drause, pp 5-8.

[68] EFIS Docket Entry No. 75, AT&T Rebuttal Testimony Drause, p 7.

[69] EFIS Docket Entry No. 75, AT&T Rebuttal Testimony Drause, pp 6-9.

[70] EFIS Docket Entry No. 75, AT&T Rebuttal Testimony Drause, pp 8.

comfort noise. These call-conditioning efforts are similar to what other carriers normally provide, and have provided for some time, as an incidental part of voice service.[71]

None of Transcom's written marketing materials make mention of the "enhancements" that Transcom provides. Until recently, Transcom's website stated that Transcom's "core service offering" is "voice termination service," and it made no mention of any purported service enhancements. Similarly, these "enhancements" are not mentioned in Transcom's contracts with its customers.[72]

The end-users that originate and make calls do not order a different service (in fact, they do not order any service from Transcom); they do not pay different rates for their calls because Transcom is involved; and they place and receive calls in exactly the same way they would if Transcom did not exist. Thus, from the customer's perspective (i.e., the calling party), any efforts Transcom undertakes to condition the call are merely incidental to the underlying voice service provided by the calling party's carrier and does not alter the fundamental character of the underlying service.[73]

2. Halo's Use of LEC-to-LEC Network

Halo has direct interconnections with certain AT&T Missouri tandem switches. All of the trunks that Halo ordered to deliver traffic to AT&T Missouri were trunks reserved for wireless traffic only.[74] AT&T Missouri and the RLEC Respondents maintain a jointly owned network of common trunks between the AT&T tandems and RLEC Respondents' central offices. This network is sometimes referred to as the "LEC-to-LEC Network" or the "Feature Group C Network." Halo has used its direct interconnections with AT&T Missouri

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[71] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, p. 22; EFIS Docket Entry No. 221, AT&T Exhibit 5, Drause Rebuttal, p. 11.

[72] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, pp. 25-26,

[73] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, pp. 23-24,

[74] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, p. 8,

to send traffic to AT&T Missouri customers. Halo has also used its interconnections with AT&T Missouri to deliver traffic indirectly over the common trunk groups between AT&T Missouri and the RLECs for termination to RLEC customers.[75]

3. AT&T and RLEC Traffic Studies

The traffic studies by AT&T Missouri and several of the RLECs demonstrate that Halo is delivering substantial amounts of wireline traffic, including interLATA[76] traffic, to AT&T Missouri and the RLECs.[77] AT&T Missouri analyzed the calls Halo sent to it during one-week periods in March 2011 and September 2011, and during a four-week period in February-March, 2012.[78] AT&T Missouri began its analysis by identifying the Calling Party Number (CPN) on each call received from Halo, i.e., the telephone number of the person who initiated the call. AT&T then consulted the industry's Local Exchange Routing Guide (LERG) and the North American Numbering Plan's (NANP) Local Number Portability (LNP) database to determine what kind of carrier (landline or wireless) owned that telephone number and whether the carrier that owned the number had designated it in the LERG as

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[75] *See* EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Direct Testimony Loges, p. 8; EFIS Docket Entry No. 222, Alma et al. Exhibit 1, Direct Testimony Molina, pp. 8-9; EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit 1, Direct Testimony Wilbert, p. 3.

[76] Missouri law defines "Local Access and Transportation Area" or "LATA" as a "contiguous geographic area approved by the U.S. District Court for the District of Columbia in United States v. Western Electric, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell Operating companies." Section 386.020(30) RSMo. Supp. 2011. The ERE Rule adopts 386.020's statutory definition of LATA and defines IntraLATA and Inter LATA traffic as follows:

(A) IntraLATA telecommunications traffic is telecommunications traffic originating and terminating within the same LATA.

(B) InterLATA telecommunications traffic is telecommunications traffic originating and terminating in different LATAs.

ERE Rule, 4 CSR 240-29.020(17).

[77] *See* EFIS Docket Entry No. 219, AT&T Exhibit 3, Mark Neinast Direct, pp. 13-14 and Schedules MN-4 and 5; EFIS Docket Entry No. 231, Craw-Kan et al. Exhibit 6, McDonald County Telephone Company witness Benjamin Jack Rickett Direct, p. 6 and Proprietary Ex. 5.

[78] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, p. 11.

landline or wireless.[79] Based upon this, AT&T Missouri was able to determine how many landline originated calls Halo was sending.[80] During the three periods reviewed, the call data showed that 22%, 56% and 66%, respectively, of the calls that Halo delivered to AT&T originated as landline calls.[81]

AT&T's traffic study data for the individual RLEC Respondents also showed that Halo was delivering significant amounts of interMTA wireless traffic. For example, the AT&T Missouri traffic study indicates that only 9-15% of the traffic Halo sends to McDonald County Telephone Company (McDonald County) was local or intraMTA wireless traffic.[82] The majority of Halo's traffic to McDonald County (between 85-91%) was either interMTA wireless traffic or landline interexchange traffic – both of which are subject to the McDonald County's approved access tariffs.

A study that McDonald County witness Jack Rickett conducted in late March of 2012 also revealed that landline long distance calls being originated and routed to the interexchange carrier (IXC) "Feature Group D" network by customers in one McDonald County exchange were being delivered as "Halo Wireless" intraMTA wireless calls to landline customers in another McDonald County exchange.[83] Mr. Rickett's findings are consistent with a study done by another small rural Missouri LEC, which found that landline interLATA calls from its regulatory attorneys' offices in Jefferson City, Missouri (in the central Missouri "Westphalia" LATA) to that company's landline network in Higginsville,

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[79] *Id*. at 12.

[80] *Id*.

[81] *Id*. at 13.

[82] EFIS Docket Entry No. 231, Craw-Kan et al. Exhibit 6, Benjamin Jack Rickett Direct, p. 6 and Proprietary Ex. 5; *see also* EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Direct Testimony Loges, pp 8-9, Alma Attachments C-1 and C-2. 7; EFIS Docket Entry No. 222, Alma et al. Exhibit 1, Direct Testimony Molina, pp. 9-10, Choctaw Attachments C-1 and C-2, MoKan Attachments C-1 and C-2.

[83] Tr. 399, 401-2.

Missouri (in the western Missouri "Kansas City" LATA) had been routed from CenturyLink to Transcom and then delivered by Halo over the LEC-to-LEC network as an "intraMTA wireless" call.[84] These calls were clearly in-state, inter-LATA landline calls originated by the FGD protocol trunking arrangements, yet Halo delivered these calls over the LEC-to-LEC network as intra-LATA "wireless" calls and refused to pay the appropriate tariff rates.[85]

Halo has offered no traffic studies of its own to contradict the studies showing that substantial amounts of Halo's traffic originates on landline facilities. Rather, Halo concedes that some of the traffic it is delivering to AT&T Missouri and the RLECs originates on landline facilities.[86] Likewise, Halo has offered no traffic studies to contradict AT&T's traffic studies showing that substantial amounts of Halo's traffic are interLATA landline traffic. Halo has offered no traffic studies or evidence to contradict the RLEC analysis that Halo traffic had been originated by FGD protocol trunking arrangements.

Halo argues that CPN may not always identify a call's origination point. While there are some situations where CPN may not always identify the origination point or originating carrier of a call, those situations are the exception, not the rule. The data and methods AT&T used in its traffic studies are the same data and methods that the entire industry uses today for determining types of calls (i.e., landline or wireless) and jurisdiction of calls.[87]

4. Halo Traffic Included Landline-Originated and InterLATA Calls

The Commission finds that the AT&T Missouri and RLEC traffic studies are competent and substantial evidence demonstrating that Halo is delivering interexchange landline traffic to AT&T Missouri and the RLEC Respondents, of which a significant amount

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[84] EFIS Appeal Case No. AP11-00682, U.S. District Court for the Western District of Missouri, *Halo Wireless, Inc. v. Citizens Telephone Company of Higginsville, Missouri, et al*., Docket Entry No. 1, Ex. 12.

[85] *Id*. (identifying landline calls from the central Missouri "Westphalia" LATA to the Kansas City LATA).

[86] EFIS Docket Entry No. 211, Halo Exhibit A, Wiseman Direct, p. 61.

[87] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, p. 17.

is interLATA wireline traffic and all of which is subject to AT&T Missouri's and the RLEC Respondents' access tariffs. Halo has either failed to pay the lawful rates for this traffic (in the case of the RLEC Respondents) or paid significantly less than the lawful rate for substantial portions of its traffic (in the case of AT&T Missouri).

D. Halo was Billed by the RLEC Respondents but Did Not Pay

After reviewing the standard Category 11 billing records provided by AT&T Missouri as required by the Commission, each of the RLEC Respondents invoiced Halo for the Halo traffic being delivered for termination to RLEC Respondents' exchanges. In light of the fact that a substantial portion of the traffic appeared to be interexchange wireline calls, some RLEC Respondents billed Halo based on their Commission-approved intrastate access rates.[88] Another group of RLEC Respondents billed Halo invoices based upon their Commission-approved reciprocal compensation rates for "local" wireless traffic even though those companies did not agree that Halo's traffic was wireless.[89] In an effort to minimize its uncollectible write-offs, one RLEC Respondent billed Halo based on the FCC's interim transport and termination compensation rate of $0.004.[90]

The uncontroverted record in this case shows that Halo has delivered compensable traffic (either access traffic or local reciprocal compensation traffic) and Halo has refused to pay for any of the post-bankruptcy traffic it delivered and continues to deliver to the RLECs,

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[88] *See* EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Direct Testimony Loges, pp. 5-7; EFIS Docket Entry No. 222, Alma et al. Exhibit 3, Direct Testimony Molina, pp. 5-7.

[89] EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit 1, Direct Testimony Wilbert, p. 4 and Proprietary Ex. 2. In addition, Craw-Kan et al. provided Halo with a summary of their approved interconnection agreements with other wireless carriers as well as copies of traffic termination agreements with Cingular (now AT&T Mobility) and T-Mobile. Craw-Kan et al. offered to use the rates, terms, and conditions of these Commission-approved agreements as a starting place for negotiations. *Id*. at pp. 5-6. The Commission notes that it has approved agreements between the Respondent RLECs and all national wireless carriers.

[90] EFIS Docket Entry No. 227, Craw-Kan et al. Exhibit 2, Direct Testimony McCormack, p. 4 and Proprietary Ex. 2; Tr. 335-37; 47 CFR §51.715(3)(b)(3).

regardless of what rate is billed.[91] Accordingly, the Commission finds that Halo has paid nothing to date for the post-bankruptcy traffic it has delivered to the RLECs.

E. Halo Has Not Paid AT&T the Appropriate Rate

The Commission has found that Halo has sent landline-originated traffic to AT&T in breach of the ICA, despite AT&T Missouri's demands for Halo to cease sending such traffic.[92] A large portion of that landline traffic is non-local in nature, and AT&T terminated that traffic for Halo. AT&T's federal tariff, filed with the FCC, requires Halo to pay access charges on the interstate traffic AT&T has terminated for Halo;[93] and AT&T's state tariff, filed with this Commission, requires Halo to pay access charges on the intrastate non-local traffic AT&T has terminated for Halo.[94] AT&T demanded that Halo pay appropriate switched access charges on all Halo post-bankruptcy petition landline-originated interexchange traffic terminated to AT&T Missouri.[95] But Halo has refused to do so, instead paying only the reciprocal compensation rate under the ICA.[96]

The Commission finds that Halo has sent AT&T interexchange traffic (both interstate and intrastate) that Halo has been misrepresenting as local, and thus subject only to reciprocal compensation charges instead of the higher access charges that apply to non-

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[91] *See* EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Direct Testimony Loges, pp 5-7; EFIS Docket Entry No. 222, Alma et al. Exhibit 1, Direct Testimony Molina, pp. 5-7; EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit 1, Direct Testimony Wilbert, pp. 4-5; Ellington Telephone Company witness McCormack Cross-Examination, Tr. 331. Instead Halo insisted it owed the RLECs nothing, and would only pay the RLECs reciprocal compensation after the RLECs requested interconnection and interconnection agreements from Halo. *Id*..

[92] EFIS Docket Entry No.217, McPhee Direct, Schedule 9.

[93] Southwestern Bell Telephone Company Interstate Access Service Tariff, F.C.C. No. 73, Section 6.9.

[94] Southwestern Bell Telephone Company Intrastate Access Services Tariff, P.S.C. Mo. No. 36, Sections 3.8, 6.11. *See also* EFIS #217, McPhee Direct, p. 20 - 21.

[95] EFIS Docket Entry No.217, McPhee Direct, Schedule 9.

[96] EFIS Docket Entry No.217, McPhee Direct, pp. 16-17.

local traffic. Accordingly, the Commission finds that Halo has failed to pay AT&T Missouri the applicable access rates for terminating Halo's landline originated interexchange traffic.

F. Originating Caller Information Violation

The exchange of accurate call detail information between interconnected carriers is essential. This information includes, among other things, the phone number of the person that originated the call (the Calling Party Number or CPN) and, in some instances, a different number for the person or entity that bears financial responsibility for the call (the Charge Number or "CN").[97] For example, a Charge Number might be used 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 shows both the CPN, for the actual line that originated the call, and the Charge Number, for the billing number that will be charged from the call.[98] When the call information includes both a CPN and a CN, the CN overrides the CPN and controls how the call is categorized and billed.[99]

From approximately mid-February, 2011 until late December, 2011, Halo inserted Charge Numbers on every call it sent to AT&T Missouri.[100] In fact, Halo admitted that it inserted a CN assigned to Transcom into the call record on every call it sent to AT&T.[101] In every case, the CN was local (i.e., in the same MTA as the number the call was being terminated to), making the call appear to be local, and thus subject to reciprocal compensation. The industry practice is to determine the local or non-local nature of the

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[97] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, p. 28.

[98] *Id*.

[99] *Id*. at 29.

[100] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, pp. 28 - 29; Tr. 202.

[101] EFIS Docket Entry No. 211, Halo Exhibit A, Wiseman Direct, p. 66.

traffic based on the CN (when both CPN and CN are present). Thus, by inserting an inaccurate CN in the call record, Halo made it more difficult for AT&T Missouri and the RLEC Respondents to evaluate Halo's traffic and therefore bill the appropriate intercompany compensation for such traffic.[102]

There is no justification for Halo's insertion of a Transcom CN in the call record, because Transcom was not the financially responsible party on any of these calls.[103] The CN field is only used when a party other than the party that originated the call is financially responsible for the call. Transcom had no relationship with any of the individuals that actually originated these calls, and Transcom did not have an interconnection agreement with AT&T Missouri. Thus, there is no reason for Halo to insert a CN to make Transcom financially responsible for these calls.

G. AT&T and RLEC Blocking Requests Relied on Valid Violations

AT&T Missouri and the RLEC Respondents have complied with the procedural requirements of the ERE Rule in order to initiate blocking of Halo's traffic. The RLEC Respondents notified Halo of their intention to block Halo's traffic pursuant to the ERE Rule on February 22, 2012,[104] March 9, 2012,[105] and March 23, 2012[106] by means of a letter sent email and U.S. Certified Mail to Halo and a separate letter sent to AT&T Missouri. In their letter to Halo, the RLEC Respondents set forth the reasons they proposed to block Halo's traffic, the date on which blocking would commence and the steps Halo could take to

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[102] EFIS Docket Entry No. 220, AT&T Exhibit 4, Neinast Rebuttal, p. 25.

[103] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, pp. 24-26.

[104] Alma, Choctaw, and MoKan Dial. EFIS Docket Entry No. 223, Alma et al. Exhibit 2, Direct Testimony Loges, Alma Attachments A and B; EFIS Docket Entry No. 222, Alma et al. Exhibit 1, Direct Testimony Molina, Choctaw Attachments A and B, MoKan Attachments A and B.

[105] Craw-Kan et al. (except for Peace Valley Telephone); *see e.g.* EFIS Docket Entry No. 226, Craw-Kan et al. Exhibit 1, Direct Testimony Wilbert, Ex. 6.

[106] Peace Valley Telephone, EFIS Docket Entry No. 233, Craw-Kan et al. Exhibit 8, Direct Testimony Bosserman, Ex. 6.

prevent the blocking. In their letter to AT&T Missouri, the RLEC Respondents specifically requested AT&T Missouri as the originating tandem carrier to implement the block. Copies of these letters were also sent, as required by the rule, to the Manager of the Commission's Telecommunications Department.[107] Upon receipt of the RLEC Respondents blocking request, AT&T Missouri notified Halo of them, and of AT&T Missouri's obligation under the Commission's ERE Rules to comply with the RLEC Respondents' request, and informed Halo of the steps it could take to prevent the blocking from occurring.

AT&T Missouri also notified Halo of its intention to block Halo's traffic pursuant to the ERE Rule on March 19, 2011, by means of a letter sent by email and U.S. Certified Mail. In its letter, AT&T Missouri set forth the reasons it intended to block Halo's traffic, the date it would do so and the steps Halo could take to prevent the blocking. A copy of AT&T's letter was also sent to the Manager of the Commission's Telecommunications Department.[108]

CONCLUSIONS OF LAW

After consideration of the evidence and the findings set forth above, the Commission has determined that substantial and competent evidence in the record as a whole supports the following conclusions of law.

A. The Commission's Jurisdiction and Burden of Proof

The Respondent LECs are "telecommunications companies" and "public utilities" as those terms are defined by Section 386.020 RSMo. Supp. 2011. The Missouri LECs and their intrastate telecommunications networks are subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 392 RSMo. Under Missouri law, the Commission has jurisdiction over intrastate telecommunications traffic and

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[107] EFIS Docket Entry No. 219, AT&T Exhibit 3, Neinast Direct, pp. 24-26.

[108] EFIS Docket Entry No. 1, Halo April 2, 2012 Complaint, Exhibits A through D.

the LEC-to-LEC network – the network at issue in this case – as well as the manner in which the LECs' lines and property are managed and operated. In particular, Section 386.320.1 obligates the Commission to assure that all calls placed on the LEC-to-LEC network, "including calls generated by nonregulated entities, are adequately recorded, billed, and paid for."[109]

Federal law authorizes the Commission "to impose, on a competitively neutral basis . . . requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[110] The Federal Telecommunications Act "preserves a state's interconnection regulations [and] holds that the FCC may not preclude the enforcement of any regulation, order, or policy of a state commission that establishes access and interconnection obligations of local exchange carriers.[111]

The Commission has the authority under 47 U.S.C. §252 to approve interconnection agreements negotiated under the Telecommunications Act. This authority includes the power to interpret and enforce the agreements the Commission has approved.[112]

Because Halo brought the complaint, it bears the burden of proof. The burden of proof is the preponderance of the evidence standard.[113] In order to meet this standard,

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[109] EFIS Docket Entry No. 139, *ERE Order of Rulemaking*, Mo. Register, Vol. 30, No. 12, June 15, 2005, p. 1377. *See also BPS Telephone et al. v. Halo Wireless*, Case No. 11-cv-04220, *Order Regarding Jurisdiction*, WDMo. Dec. 21, 2011. In response to Halo's attempted removal of the earlier RLEC complaint case to the U.S. Western District, Judge Laughrey concluded, "The Commission has the authority to regulate the subject matter of this dispute, and the Court does not have jurisdiction over Plaintiff's claims until the Commission has rendered a decision for the Court to review."

[110] 47 U.S.C. §253(b).

[111] EFIS Docket Entry No. 139, *ERE Order of Rulemaking*, p. 1377, citing 47 U.S.C §251(d)(3).

[112] EFIS Docket Entry No. 175, *Southwestern Bell v. Connect Communs Corp*. 225 F.3d 942 (8th Cir. 2000)(The Act's "grant of power to state commissions necessarily includes the power to enforce the interconnection agreement."); EFIS Docket Entry No. 176, *Budget Prepay, Inc. v. AT&T*, 605 F.3d 273 (5th Cir. 2012)(State commissions have "power both to approve ICAs and to interpret and enforce their clauses.").

Halo must convince the Commission it is "more likely than not" that its allegations are true.[114] Similarly, AT&T Missouri bears the burden of proof for its counterclaim.

B. AT&T Missouri's Counterclaim and ICA Complaint

1. Halo Has Delivered Traffic to AT&T Missouri That Was Not "Originated through Wireless Transmitting and Receiving Facilities" as Provided by the Parties' ICA

The Commission finds that Halo has delivered traffic to AT&T Missouri that was not "originated through wireless transmitting and receiving facilities" as provided by the parties' ICA. The only traffic the ICA allows Halo to send to AT&T Missouri is traffic that originates on wireless equipment. The ICA states:

> 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.[115]

The evidence has shown that Halo has been sending large amounts of landline-originated traffic to AT&T Missouri. For example, Halo's President, Mr. Wiseman, acknowledges, "Most of the calls probably did start on the other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN."[116] That alone proves a breach of the ICA.

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[113] *Bonney v. Environmental Engineering, Inc*., 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper,* 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp*., 936 S.W.2d 104, 110 (Mo. banc 1996).

[114] *Holt v. Director of Revenue, State of Mo*., 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999*); Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

[115] EFIS Docket Entry No. 217, AT&T Exhibit 1, J. Scott McPhee Direct Testimony, ("McPhee Direct"), p. 13, line 22 – 14, line 11; Schedule JSM-5. (Emphasis added.)

[116] EFIS Docket Entry No. 211, Halo Exhibit A, Russ Wiseman Direct Testimony ("Wiseman Direct"), p. 61, lines 10-11. *See also* EFIS Docket Entry No. 218, AT&T Exhibit 2, J. Scott McPhee Rebuttal Testimony ("McPhee Rebuttal"), p. 2, lines 1-7; EFIS Docket Entry No. 220, AT&T Exhibit 4, Mark Neinast Rebuttal Testimony ("Neinsast Rebuttal"), p. 6, line 1 - 7, line 13.

AT&T Missouri presented evidence of extensive studies it performed in which it analyzed the calls Halo sent to it during one-week periods in March 2011 and September 2011, and during a four-week period in February-March 2012.[117] AT&T Missouri began its analysis by identifying the CPN on each call received from Halo, i.e., the telephone number of the person who started the call.

AT&T Missouri then consulted the industry's LERG and the NANP LNP database to determine what kind of carrier (landline or wireless) owned that number and whether the carrier that owned the number had designated it in the LERG as landline or wireless.[118] Based on this, AT&T Missouri was able to determine how many landline-originated calls Halo was sending.[119] During the three periods reviewed, the call data showed that 22%, 56% and 66%, respectively, of the calls that Halo delivered to AT&T Missouri originated as landline calls.[120]

Halo has challenged these call studies contending that some calls that originate from what appear to be landline numbers could, in some scenarios, actually originate from a wireless device. Based on this, Halo contends that CPNs are unreliable and cannot be used to identify the origination point or originating carrier on any of the calls Halo sends AT&T Missouri.[121] The Commission disagrees. The data and methods AT&T Missouri used are the same data and methods that the entire industry uses today for determining

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[117] EFIS Docket Entry No. 219, AT&T Exhibit 3, Mark Neinast Direct Testimony ("Neinast Direct"), Direct, p.11, lines 1-6.

[118] *Id*. at 12, lines 8-16.

[119] *Id*. at 12, line 17 – 13, line 6.

[120] *Id*. at 13, line 22 – 14, line 4; Schedule MN-4.

[121] EFIS Docket Entry No. 211, Wiseman Direct at 56, line 16, *et. seq.*

what AT&T Missouri sought to determine.[122] As the Tennessee Regulatory Authority explained in a nearly identical case:

> The Authority acknowledges that a certain degree of imprecision can occur when analyzing the origin to individual telephone calls, due to factors such as the advent of number portability and the growth of wireless and IP telephony. However, because of these technical issues, the industry has developed conventions and practices to evaluate calls for the purpose of intercarrier compensation. The Authority finds that the methodology used to collect the data and the interpretation of the data in the AT&T study are based upon common industry practices to classify whether traffic is originated on wireline or wireless networks.[123]

Although Halo had access to all of the same data AT&T Missouri used for its analyses, Halo presented no call analysis to support its claims, nor did it present any evidence of how much of the traffic it delivers (if any) originates on wireless devices with CPNs that the LERG shows as landline. Based upon AT&T Missouri's call study data, the Commission concludes that Halo has been sending large amounts of landline-originated traffic to AT&T Missouri in violation of the parties' ICA.

Halo, however, contends that all the calls it sends to AT&T Missouri, regardless of how a call began or on what network, should be deemed to originate as wireless calls by Transcom, its affiliated high-volume (and only) customer in Missouri. Halo bases this contention on its claims that Transcom is an Enhanced Service Provider (because it claims to change the content of calls that pass through its system and claims to offer enhanced

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[122] *Id*.

[123] EFIS Docket Entry No.153, Order, *In re: BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119 (Tenn. Reg. Auth., Jan. 26, 2012) ("*Tennessee Halo Order*") , at 17. See also EFIS Docket Entry No.236, *In Re: Complaint of TDS TELECOM on Behalf of Its Subsidiaries Against Halo Wireless, Inc., Transcom Enhanced Services, Inc. and Other Affiliates for Failure to Pay Terminating Intrastate Access Charges for Traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic,* Order on Complaints, Docket No. 34219, pp. 6-7 (Georgia Pub. Serv. Comm. July 17, 2012) ("*Georgia Halo Order*").; and EFIS Docket Entry No.236, Order Granting Relief against Halo Wireless, *Complaint and Petition for Relief of BellSouth Telecommunications LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Halo Wireless, Inc.*, Docket No. 2011-304-C , p. 9 (Pub. Serv. Comm. S. Car. July 17, 2012) ("*South Carolina Halo Order*").

capabilities); and that since Transcom is not a carrier, it is an end-user. Halo thus argues it is a CMRS carrier selling wireless telephone exchange service to an Enhanced Service Provider (ESP) end-user. On this basis, Halo asserts that whenever a call passes through Transcom, that call is terminated and Transcom then originates a new, local, wireless call (because the connection between Transcom and Halo is wireless) before the call reaches Halo.

From a technical perspective, the evidence shows that Halo and Transcom have set up a network arrangement employing two tower sites at which both Transcom and Halo maintain equipment that serves Missouri: one in Wentzville, Missouri, to serve the eastern portion of Missouri; and the other in Junction City, Kansas to serve the western portion of the Missouri. Every call that comes to Halo for termination in the eastern portion of the state first passes from the carrier whose end user customer originated the call to Transcom (typically, indirectly through intermediate providers) at one of its four switching stations (or data centers) in Dallas, New York, Atlanta, and Los Angeles.[124] Transcom then sends the call to its equipment at the Wentzville tower site, where Transcom then transmits the call, wirelessly, for about 150 feet to Halo's equipment.[125] Halo then sends the call on to AT&T Missouri's tandem switch for termination to an AT&T Missouri end-user or to be passed on to a third-party carrier for termination.[126] The tower site Transcom and Halo have established in Junction City, Kansas to serve the western portion of Missouri functions similarly.

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[124] *See* Tr. June 26, 2012, at 266, lines 3-20.

[125] EFIS Docket Entry No. 221, AT&T Exhibit 5, Raymond W. Drause Rebuttal Testimony ("Drause Rebuttal") at 6, lines 1-14.

[126] *Id*. at 6, line 14 – 7, line 2; Schedule RD-3.

The Commission has examined Halo's theory based upon which it claims that no violation of the ICA has occurred, the authorities Halo has cited, and the evidence of the network arrangements employed by Transcom and Halo. Upon this review, the Commission rejects Halo's theory, primarily based on the FCC's recent *Connect America Order*,[127] which the Commission finds dispositive.

The FCC singled out Halo by name, described Halo's arrangement of having traffic pass through a purported ESP (*i.e.*, Transcom) before reaching Halo,[128] noted Halo's theory that calls in this arrangement are "re-originated" in the middle by Transcom, and flatly rejected that theory:

> 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.
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> 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.
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> 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." It further asserts

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[127] *Connect America Fund*, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011) ("*Connect America Order*").

[128] The FCC was well aware that Halo was arguing that Transcom is an ESP and therefore must be deemed to originate all calls that pass through it. Halo made this argument explicitly in its *ex parte* submissions to the FCC, which the FCC cited and relied on in the *Connect America Order* as describing Halo's position. *See Connect America Order*, nn. 2120-2122, 2128; (EFIS Docket Entry No. 217, McPhee Direct at 18 n.20; Schedules JSM-6, JSM-7).

> 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.***[129]

The FCC conclusively rejected Halo's theory that calls that begin with an end-user dialing a call on a landline network are somehow "re-originated" and transformed into wireless calls simply by passing through Transcom. In fact, Halo concedes that the FCC rejected its theory; Halo witness Wiseman stated, "we acknowledge that the FCC … apparently now believes ESPs … do not originate calls."[130] The FCC said that a call is

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[129] *Connect America Order*, (Emphasis added and footnotes omitted).

[130] EFIS Docket Entry No. 211, Wiseman Direct at 31, lines 3-4. Endowing a phrase in the first sentence of paragraph 1006 of the *Connect America Order* with a significance the FCC plainly did not intend, Halo has suggested that the FCC rejected its theory only "for purposes of the intraMTA rule," and not for purposes of the parties' ICA. But the very purpose of the provision in the ICA that permits Halo to deliver traffic to AT&T only if it originates on wireless equipment is to implement the intraMTA rule. Halo's notion that the FCC's ruling leaves open the possibility that the traffic at issue here originates with Transcom for purposes of the ICA, even though it does not originate with Transcom for purposes of the intraMTA rule, is desperately mistaken.

originated wirelessly only if the "calling party" – the person dialing the phone number – initiated the call through a wireless carrier. The Commission concurs with this analysis.

In addition, the Commission finds that there is no technical reason for the 150-foot link between Transcom and Halo to be wireless. The same connection could be made much less expensively by using a short "CAT-5" cable, and using a cable would increase service reliability.[131] The Commission finds that the only reason Halo created a roundabout wireless connection with Transcom, rather than a short and direct wired connection, was so Halo could attempt to claim that all calls it passes to AT&T are wireless and local.[132] For the reasons set out above, the Commission rejects Halo's claim.

The Commission further concludes that there is no authority for Halo's claim that ESPs terminate every call they touch and then originate a new call. Nothing in the law says that. The FCC has made clear that ESPs "are treated as end-users *for the purpose of applying access charges*"[133] only and "are treated as end users *for purposes of our access charge rules*."[134] The "ESP exemption" is a legal fiction that allows ESPs to be treated like end users *for the purpose of not having to pay access charges*.[135] An ESP cannot use this

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[131] *Id*. at 7, lines 3-17.

[132] *Id*. At hearing, counsel for Halo suggested that the wireless connection between Transcom and Halo could not eliminated by using a cable if the distance between the Transcom equipment and the Halo equipment were greater. *See* Tr. June 26, 2012, at 222, lines 4-7. That suggestion fell flat, for two reasons. First, a CAT-5 cable can carry IP voice packets more than 100 meters if a regenerator is used. *Id*. at 222, lines 8-15. Second, the wireless connection could be eliminated without even using a cable, by having the traffic transferred from Transcom to Halo within the Ethernet switch that Transcom and Halo share. *Id*. at 223, line 16 - 224, line 11.

[133] EFIS Docket Entry No. 238, *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).

[134] EFIS Docket Entry No. 126, *Northwestern Bell Tel. Co. Petition for Declaratory Ruling*, 2 FCC Rcd. 5986, ¶ 21 (1987) ("*Northwestern Bell Order*"). Five years after it was issued, this decision was vacated as moot. 7 FCC Rcd. 5644 (1992). The decision still carries weight, however, as the FCC's explanation of the ESP exemption.

[135] The Commission notes that the ESP exemption from access charges applies only to the ESP itself, not to any telecommunications carrier that serves the ESP, which means that any ESP exemption for Transcom

limited "end-user" status to claim it "originates" calls that actually began when someone else picked up a phone and dialed a number. Transcom does not start the call (the calling party does), does not decide who will be called (the calling party does), and does not provide the voice content that the parties exchange on the call. The FCC has never held that an ESP "originates" calls that started elsewhere and end elsewhere and merely pass through the ESP somewhere in the middle.[136] To the contrary, the FCC rejected Halo's theory that Transcom originates calls in the *Connect America Order*.[137] When a landline call is placed, for example from California to Missouri, that is one call, not two calls. No new, separate call exists merely because call passed through Transcom's equipment.

Halo's reliance on decisions by bankruptcy courts during Transcom's bankruptcy proceeding several years ago for the proposition that Transcom is an ESP under federal law is misplaced. Only one of these decisions both involved an AT&T entity and actually held that Transcom is an ESP.[138] That decision, however, was vacated on appeal and

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would not apply to Halo anyway. EFIS Docket Entry No. 126, *Northwestern Bell Order*, 2 FCC Rcd. 5986, ¶ 21 (1987); EFIS Docket Entry No. 240, *Illinois Bell Tel. Co. v. Global NAPs Illinois, Inc.*, Docket No. 08-0105, at 24, 42 (Ill. Comm. Comm'n Feb. 11, 2009) (the ESP exemption "exempts ESPs, and *only* ESPs, from certain access charges" and does not apply to carriers that transport calls for ESPs). Thus, regardless of Transcom's purported 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.

[136] Halo claims that the FCC has found that ESPs – as end users – originate traffic even when they receive the call from some other end-point. But Halo does not cite a single decision by the FCC, or by any other authority, that actually holds this. Halo also tries to compare Transcom to an entity using a "Leaky PBX," as if it that legitimizes Halo's conduct. That 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. EFIS Docket Entry No. 193, *MTS and WATS Market Structure*, 97 FCC 2d 682, ¶ 87 (1983). *See also* EFIS Docket Entry No. 220, Neinast Rebuttal at 22, line 15 - 23, line 13. Simply put, the only time the FCC has actually addressed what Halo does is in the *Connect America Order*, where it rejected the identical argument Halo is making here.

[137] *Connect America Fund Order*, ¶¶ 1005-06. The FCC also rejected a similar two-call theory several years earlier in the *AT&T Calling Card Order*. EFIS Docket Entry No. 173, Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826, ¶ 6 (2005) ("*AT&T Calling Card Order")*, *aff'd*, *AT&T Corp. v. FCC*, 454 F.3d 329 (D.C. Cir. 2006).

[138] That decision is Exhibit 1 to the Johnson Direct, EFIS Docket Entry No.212.

carries no precedential or preclusive effect here.[139] The Georgia,[140] Pennsylvania, South Carolina, Tennessee, and Wisconsin commissions have already evaluated this same issue and found that the bankruptcy rulings have no preclusive effect.[141] The Commission agrees.

The Commission further concludes that Transcom does not qualify as an ESP. To be an ESP, Transcom must provide an "enhanced service," which the FCC defines as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.[142]

In applying this definition, the FCC has consistently held that a service is not "enhanced" when it is merely "incidental" to the underlying telephone service or merely "facilitate[s] 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 in deciding whether a service is "enhanced" one must use the end-user's perspective.[143] The FCC

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[139] EFIS Docket Entry No. 212 at 1 (upper right-hand corner); EFIS Docket Entry No. 244, *Kosinski v. C.I.R.*, 541 F.3d 671, 676-77 (6th Cir. 2008) (collecting cases).The other decision, the one confirming Transcom's plan of reorganization, did not resolve any dispute between parties regarding whether Transcom was an ESP – much less whether all calls that pass through Transcom must be deemed to be wireless-originated – because that point was neither contested in the proceedings leading to that order, nor was it necessary to the order. Accordingly, the order has no preclusive effect. *E.g.*, EFIS Docket Entry No. 245, RESTATEMENT (SECOND) OF JUDGMENTS, § 16 comment c.

[140] EFIS Docket Entry No. 236, *Georgia Halo Order,* pp. 3, 10. See also Georgia PSC May 9, 2012 Order Denying Partial Motion to Dismiss, pp. 3-4

[141] *See* EFIS Docket Entry No. 153, *Tennessee Halo Order* at 22 n.85; EFIS Docket Entry No. 236, *South Carolina Halo Order* at 19. The Public Service Commission of Wisconsin has not yet issued its written order.

[142] EFIS Docket Entry No. 246, 47 C.F.R. § 64.702(a).

[143] EFIS Docket Entry No. 247,*Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

typically describes services that do not alter the fundamental character of the telephone service as "adjunct-to-basic," meaning they are not "enhanced services."[144]

Transcom claims it provides enhanced service because it takes steps to minimize background noise on a voice call and inserts "comfort noise" during periods of silence so the parties do not think the call has been disconnected.[145] The Commission, however, finds that suppressing background noise and adding comfort noise are not "enhancements" to the underlying voice telecommunications service. They are merely the same type of call-conditioning that carriers normally provide, and have provided for some time, as an incidental part of voice service (*e.g.*, by using repeaters to boost a voice signal over long distances).[146]

The Commission finds that Transcom's involvement in the calls at issue here occurs "automatically, without the advance knowledge or consent of the customer [*i.e.*, the person making the call]" and Transcom does not provide any service to the calling party.[147] Nor does the calling party receive from Transcom (or from his or her own carrier) "anything other than [the capability to] make a telephone call."[148] The end-users that make calls do not order a different service (indeed, they do not order any service from Transcom);[149] they

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[144] *See* EFIS Docket Entry No. 173, *AT&T Calling Card Order*, ¶ 16 & n.28. Halo has argued that Transcom's service technically cannot be "adjunct-to-basic" because Transcom does not provide basic telephone service. That both is incorrect and misses the point. Even if Transcom does not provide basic telephone service, that does not mean it therefore must be deemed to provide an enhanced service. The "adjunct-to-basic" terminology is used to distinguish *any* service that does not change the fundamental character of the telephone service the end-user is using, regardless of who provides that basic telephone service.

[145] EFIS Docket Entry No. 212, Johnson Direct at 15, line 1 - 16, line 21.

[146] EFIS Docket Entry No. 219, Neinast Direct at 22, line 16 – 23, line 12; EFIS Docket Entry No. 221, Drause Rebuttal at 11, line 3 – 14, line 13.

[147] EFIS Docket Entry No. 212, Johnson Direct at 8, lines 7-11.

[148] EFIS Docket Entry No. 173, *AT&T Calling Card Order*, ¶¶ 16-17.

[149] Transcom does not serve any actual end users. Rather, it provides wholesale service to carriers and other providers. As Transcom's representative testified, "Transcom does not deal with ultimate consumers [*i.e.*,

do not pay different rates because Transcom is involved; and they place and receive calls in exactly the same way they would if Transcom did not exist. Thus, "[f]rom the customer's perspective" – the perspective of the end-user making the call – anything Transcom does is merely "incidental" to or "adjunct to" the underlying voice service provided by the caller's carrier, does not alter the "fundamental character" of that underlying service, and is therefore not an "enhanced service."[150]

None of Transcom's written marketing materials makes any mention of the purported "enhancements" that Transcom provides, so there is no "offering" of any enhancement.[151] Indeed, until recently Transcom's website flatly stated that Transcom's "core service offering" is "Voice Termination Service," *not* any purported service enhancements.[152] And until recent changes made in response to AT&T's testimony, Transcom's website never mentioned any purported "enhancements" to service quality at all.[153] The claimed "enhancements" are not even mentioned in Transcom's contracts with its customers.[154] At best, whatever Transcom does is merely "incidental" to the underlying telecommunications

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end-users] and does not provide any service to them. Transcom has no relationship with their distant third parties [*i.e.*, end-users] at all." EFIS Docket Entry No. 212, Johnson Direct at 8, lines 7-9.

[150] EFIS Docket Entry No. 173, *AT&T Calling Card Order*, ¶ 16. Further evidence that Transcom does not alter the "fundamental character" of the calls that pass through it on the way to Halo and AT&T is that the calls still fit easily with the definition of "telecommunications" in 47 U.S.C. § 153(50). The definition states that "telecommunications" means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content thereof." The calls at issue here, *e.g.*, a call from a girl in California to a relative in St. Louis, involve transmission "between or among points specified by the user" (the girl specifies her landline phone in California and her grandmother's phone in St. Louis), of "information of the user's choosing" (the voice communication with her relative), "without change in the form or content of the information as sent or received," since the words the girl speaks in California are the same words that reach her grandmother in St. Louis.

[151] EFIS Docket Entry No. 218, McPhee Rebuttal at 4, lines 7-19.

[152] *Id.* at 4, lines 1-6.

[153] EFIS Docket Entry No. 217, McPhee Direct at 9, lines 6-18.

[154] EFIS Docket Entry No.218, McPhee Rebuttal at 4, lines 16-19.

service provided by the calling party's carrier, and therefore does not qualify as an enhanced service.[155]

Consistent with FCC precedent, four state commissions have now expressly ruled that Transcom's service is not an enhanced service. For example, the Tennessee Regulatory Authority found:

> Transcom only reduces background noise and inserts "comfort noise" in periods of silence so that those periods of silence are not mistaken for the end of a call. . . .The alleged "enhancements" that Transcom claims it makes to calls that transit its network are simply processes to improve the quality of the call. Telecommunications networks have been routinely making those types of improvements for years and, in some cases, decades. Carriers have routinely incorporated equipment into networks that have, for example, expanded the dynamic range of a voice call to improve clarity. The conversion from analog to digital and back to analog has significantly improved call quality, yet none of those processes are deemed "enhancements" in the sense of an ESP.[156]

The Commission agrees and concludes that Transcom is not an ESP.

2. Halo Has Not Paid the Appropriate Compensation to AT&T Missouri as Prescribed by the Parties' ICA. Access Compensation Applies to Halo's Traffic

The Commission has found that Halo has sent AT&T and the LECs subtending its tandem switches large amounts of interexchange landline-originated traffic (both interstate and intrastate). Halo has contended that this traffic is local, and thus subject only to reciprocal compensation charges instead of the higher access charges that apply to non-local traffic. Halo has argued that it cannot be required to pay tariffed access charges because, it claims, it technically did not receive access service precisely as it is defined in

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[155] EFIS Docket Entry No. 173, *AT&T Calling Card Order*, ¶ 16 & n.28

[156] EFIS Docket Entry No. 153, *Tennessee Halo Order*, at 21-22. *See also* EFIS Docket Entry No. 236, *Georgia Halo Order*, pp. 9-10; and EFIS Docket Entry No. 236, *South Carolina Halo Order*, p. 6.

AT&T's tariffs. For example, Halo contends that it did not receive service from AT&T via a "Feature Group D" arrangement. The Commission disagrees.

AT&T's federal tariff, filed with the FCC, requires Halo to pay access charges on the interstate traffic AT&T has terminated for Halo, and AT&T's state tariff, filed with this Commission, requires Halo to pay access charges on the intrastate non-local traffic AT&T has terminated for Halo.[157] A tariff is a document which lists a public utility's services and the rates for those services. Once approved by the Commission, a tariff "becomes Missouri law and has the same force and effect as a statute enacted by the legislature."[158] The lack of terms in the ICA defining the proper intercarrier compensation that Halo must pay for terminating interexchange landline-originated traffic (because the landline-originated traffic was not permitted by the ICA) does not excuse Halo from compliance with lawful tariffs. When AT&T terminates interexchange and interstate calls for other carriers, that is access service, and those carriers must pay the access rates in AT&T's access tariffs. The Commission holds that Halo should be treated no differently.

Halo's claim that it has not ordered access service is unavailing. A carrier "constructively orders" service under a tariff, and therefore must pay the tariffed rate, if it (1) is interconnected in such a manner that it can expect to receive access services; (2) fails to take reasonable steps to prevent the receipt of services; and (3) does in fact receive such services.[159] The doctrine applies here for three reasons.

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[157] EFIS Docket Entry No. 217, McPhee Direct at 20, line 16 - 21, line 2.

[158] EFIS Docket Entry No. 167, *Bauer v. Southwestern Bell Telephone Company*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997).

[159] EFIS Docket Entry No. 255, *Advamtel LLC v. AT&T Corp.*, 118 F. Supp. 2d 680, 685 (E.D. Va. 2000) (*citing United Artists Payphone Corp. v. New York Tel. Co.,* 8 FCC Rcd 5563 at ¶ 13 (1993) and *In re Access Charge Reform,* 14 FCC Rcd 14221 (1999) at ¶ 188).

First, Halo "is interconnected [to AT&T] in such a manner that it can expect to receive access services." Halo interconnects to AT&T under the ICA and agreed to pay access charges on at least some of the traffic it sent to AT&T (assuming the traffic was all wireless).[160] Halo also knew it was sending traffic to AT&T that started outside the MTA or local calling area where Halo was located and that interMTA and non-local traffic are subject to access charges. *Second*, Halo "fail[ed] to take reasonable steps to prevent the receipt of [access] services." Indeed, Halo took *no* steps to prevent the receipt of access services. Halo never tried to stop Transcom from sending it landline-originated traffic that Halo knew (or should have known) began in other local calling areas or other states and continues to knowingly accept that long-distance landline traffic and pass it to AT&T for termination today.[161] *Third*, Halo "did in fact" receive terminating access service from AT&T. The evidence shows Halo sent huge amounts of landline-originated non-local traffic to AT&T and AT&T terminated such traffic to its end-users. The termination of long-distance traffic is the essence of terminating switched access service, and the long-established rates for such service are in AT&T's access tariffs.[162]

Halo also contends that the FCC held in the *Connect America Order* that Halo's service is merely transit service and it cannot owe terminating access charges to AT&T or other carriers. Halo is incorrect. The *Connect America Order* never held that Halo's service is transit service, much less that Halo is exempt from paying terminating access

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[160] EFIS Docket Entry No. 217, McPhee Direct, Schedule JSM-4, ICA § 4.2.

[161] *See* EFIS Docket Entry No. *254, AT&T Corp. v. Community Health Group*, 931 F. Supp. 719, 723 (S.D. Cal. 1995) (defendants constructively ordered service because they "have come forth with no showing that they acted in any way to control the unauthorized charging of AT&T … calls to their system" by a hacker).

[162] 47 C.F.R. § 69.2(b) (FCC defines "Access service" to include "services and facilities provided for the origination or termination of any interstate or foreign telecommunication."). *See also* Southwestern Bell Telephone Company Access Service Tariff F.C.C. NO. 73, Section 6.9; P.S.C. Mo.-No. 36 Access Services Tariff Sections 3.8, 6.11. Those tariffed rates are the rates Halo must pay. EFIS Docket Entry No. 217, McPhee Direct, p. 21.

charges when it hands long-distance traffic to AT&T for termination. The issue in the *Connect America Order* was whether Transcom could be deemed to originate every call it touches and whether the calls Halo was handing to LECs should be treated as local or non-local.[163] The FCC used the term "transit" merely to point out that entities that simply pass calls on in the middle of the call path are not viewed as originating those calls – and that because Transcom did not originate the calls Halo was passing to other carriers for termination, those calls were not local (*i.e.*, not intraMTA) and therefore were not merely subject to reciprocal compensation charges.[164] The Commission concludes that as non-local calls, those calls are subject to terminating access charges.

Halo further contends that Transcom performs enhancements on the calls it receives from other carriers and then originates the purported enhanced traffic for delivery to Halo. As discussed above, the Commission has concluded that Transcom neither performs enhancements nor originates traffic. But even if it did, the Commission finds that the purportedly enhanced traffic necessarily would originate from the same locations that Transcom performed the "enhancements," namely, at the Transcom data centers in Atlanta, New York City, Los Angeles and Dallas, *not* at a tower site in Missouri.[165] Traffic, whether

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[163] *Connect America Order*, ¶¶ 1004-06. The Commission also notes Halo's *ex partes* to the FCC, which framed the issue there, never once argued that Halo was providing transit service to other carrier. Quite the opposite, Halo argued that it was merely sending locally originated, wireless traffic to ILECs and therefore only had to pay reciprocal compensation, rather than access charges. EFIS Docket Entry No. 217, McPhee Direct, Schedules JSM-6 and JSM-7.

[164] *Id.*

[165] *Id*. at 235, line 20 - 236, line 6 (" . . . So while I am not saying that there is an origination – or a further origination, I believe is the terminology that your witnesses are commonly using, they're claiming there's a further origination of the call that takes place. And if that further origination were to take place, then the point at which that was taking place would be back at the data center. It wouldn't be at the tower site"); and at 266, lines 206, line 3 – 267, line 14 (stating that Transcom's data centers are in Atlanta, New York City, Los Angeles and Dallas; that there is no wireless equipment at Transcom's data centers; and that a further origination at the data centers therefore would not be wireless). *See also id*. at 241, lines 10-18 (Q: Now, I believe what you are saying is that, well, if you want to get to where it might originate from Transcom, where it really originates is back at the data center, which is not there in the MTA, it's one of the four locations that are

wireline or wireless, that originates in Atlanta, New York, Los Angeles or Dallas and terminates in Missouri is non-local traffic to which access charges apply.

Given that Halo has received terminating access service from AT&T, and under the law has "constructively ordered" that service for all landline traffic it sent to AT&T, the Commission holds that Halo is liable to AT&T for access charges on the long-distance landline traffic Halo has sent to AT&T. The Commission notes that it is not making any determination how much Halo owes AT&T, or how many minutes of access traffic Halo has sent AT&T. The court in Halo's bankruptcy case has made clear that this relief is permissible, explaining that the only limitation on the relief state commissions can grant for Halo's wrongdoing is that they should not issue relief involving "*liquidation of the amount* of any claim against the Debtor."[166] The actual amount Halo must pay will be determined in bankruptcy court.

3. Halo Has Committed a Material Breach of Its ICA with AT&T Missouri, so AT&T Missouri Is Entitled to Discontinue Performance under the ICA

The Commission has concluded that only traffic the ICA allows Halo to send to AT&T is traffic that originates on wireless equipment. The ICA states:

> 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].[167]

The Commission holds that this "wireless traffic only" provision is a material term of the ICA. It is important because wireless traffic and landline traffic are regulated differently.

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involved here? A: That's right. The call -- or the further communication would originate back at the data center.").

[166] EFIS Docket Entry No. 25, Exhibit B, Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay, *In re Halo Wireless, Inc.,* Case No. 11-42464-btr-11 (Bankr. E.D. Tex., Oct. 26, 2011) (emphasis added).

[167] EFIS Docket Entry No. 217, McPhee Direct at 13, line 22 – 14, line 11; Schedule JSM-5.

The geographic areas used to determine whether traffic is local (and therefore subject to reciprocal compensation charges) or non-local (and therefore subject to access charges, which are higher) differ greatly for wireless and landline traffic.[168] Wireless traffic is classified as local or non-local based on Major Trading Areas ("MTAs"), which are quite large. For landline traffic, calls are classified as local or non-local based on "local calling areas," which are much smaller.[169] For example, there are only four MTAs in all of Missouri, but more than 720 landline local calling areas.[170]

Having found the "wireless traffic only" provision material, the Commission holds that Halo's breach of it entitles AT&T to discontinue performance under the ICA and stop accepting traffic from Halo. When a party materially breaches a contract, or breaches the contract in a way so basic as to defeat the purpose of the contract, the other party is excused from further performance.[171] Halo's breach here – continuously sending huge amounts of landline-originated traffic that the ICA does not allow – plainly defeats the core purpose of the ICA, which was to establish rates, terms, and conditions for *wireless-originated* traffic *only*.

The Commission's granting this relief will not run afoul of Halo's ongoing bankruptcy proceeding. AT&T asked for and received the identical relief from the Tennessee Regulatory Authority,[172] and then discontinued service to Halo in light of the TRA's Order. Halo complained of this to the bankruptcy court, and the bankruptcy court rejected Halo's

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[168] EFIS Docket Entry No. 217, McPhee Direct at 15, line 1 – 16, line 13.

[169] *Id.*

[170] *Id*. at 16, lines 11-13.

[171] *E.g.*, EFIS Docket Entry No. 190, *Barnett v. Davis*, 335 S.W.3d 110, 112 (Mo. App. W.D. 2011) (noting "Missouri's first to breach rule, stated in *R.J.S. Security v. Command Security Services, Inc.,* 101 S.W.3d 1, 18 (Mo. App. W.D. 2003), [EFIS Docket Entry No. 191] which provides that 'a party to a contract cannot claim its benefit where he is the first to violate it.' A breach by one party will excuse the other party's performance, however, only if the breach is material. *Id*.").

[172] *See* EFIS Docket Entry No. 153, *Tennessee Halo Order* at 22

complaint.[173] The bankruptcy court found that the TRA "had jurisdiction to interpret and enforce the provisions of the interconnection agreement," that "[t]he TRA's ruling and Order regarding AT&T Tennessee's right to stop accepting traffic is within the TRA's police and regulatory powers and falls with[in] the exception to the automatic stay as found in this court's Courts 362(b)(4) Order," and that "[t]he TRA's determination that AT&T Tennessee may terminate the ICA is also within the TRA's authority and jurisdiction; however, prior to any termination, AT&T Tennessee must also comply with section 365 of the Bankruptcy Code."[174] The Commission grants AT&T similar relief here and notes that AT&T must similarly comply with Section 365.

C. Blocking Under the Missouri ERE Rule

1. The Missouri ERE Rule Applies to Halo's Traffic

a. History and Necessity of the ERE Rule

Staff witness William Voight was a primary drafter of the ERE Rule.[175] Mr. Voight testified that the rule was a necessary response to protect the LEC-to-LEC network from documented problems:

> The ERE rule . . . was established to avert incidences of unidentifiable, or phantom, traffic. The ERE rule was put into place to ensure all companies on the call-path were adequately compensated for use of their networks. Central to the goal of full and fair compensation was a requirement for tandem switch providers, such as AT&T Missouri and CenturyTel, to create billing records and for all companies to ensure calling party telephone number (CPN) information is provided and transmitted for all types of traffic. The ERE rule establishes a framework to help ensure: (1) CPN is transmitted on each call; (2) a record of the call is created and made available to terminating carriers; and, (3) carriers are paid for the use of their networks. If companies are not paid for use of their networks or if companies fail to transmit CPN or

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[173] EFIS Docket Entry No. 6, Exhibit 5, Order Denying Plaintiff's Request for Emergency Injunctive Relief, *In re Halo Wireless, Inc.* and *Halo Wireless, Inc. v. BellSouth Telecommunications, LLC,* Case No. 11-42464-btr-11/Adv. Proc. No. 12-04019 (Bankr. E.D. Tex., Feb 6, 2012)

[174] *Id*., ¶¶ 2-4.

[175] Tr. 90, 446.

> otherwise disguise the jurisdiction of the call, the aggrieved company may request blockage of the offender's traffic.[176]

Staff's testimony is consistent with the ERE *Order of Rulemaking*, which recognized "extensive documentation of problems" experienced by RLECs.[177]

On June 15, 2005, after a rulemaking proceeding in Case No. TX-2003-0301, the Commission published and adopted the ERE Rule, which became effective July 30, 2005.[178] The intent of the ERE Rule was to adopt minimally invasive local interconnection rules necessary to address the complex processes and interests of those companies involved with traffic traversing the LEC-to-LEC network. In its *Order of Rulemaking*, the Commission rejected wireless carriers' contentions they were entitled to use the LEC-to-LEC network without regard to service quality, billing standards, or compensation. The Commission determined that the ERE Rule did not seek to regulate the business practices and customer-related activities of wireless carriers.

b. Commission Authority for Promulgating the ERE Rule

The Commission's *Order of Rulemaking* found no FCC rules addressing the disputes arising from traffic placed on the LEC-to-LEC network. On the contrary, the Commission observed that adoption of the ERE Rule was necessary and of particular importance to reduce compensation disputes and provide a forum for resolving such disputes when they occurred. The Commission concluded §386.320.1, RSMo, obligated the Commission to assure all calls, including calls generated by nonregulated entities such as wireless carriers, are adequately recorded, billed, and paid for. Federal law also authorizes the Commission

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[176] EFIS Docket Entry No. 224, PSC Staff Ex. 1, William Voight Direct Testimony, p. 3.

[177] EFIS Docket Entry No.139, *ERE Order of Rulemaking*, Mo. Register, Vol. 30, No. 12, p. 1376

[178] EFIS Docket Entry No. 139, *ERE Order of Rulemaking*, Mo. Register, Vol. 30, No. 12, pp. 1373-1401. The separate sections of the ERE Rule are codified at 4 CSR 240-29.010-29.160.

to enforce "any regulation, order, or policy . . . that establishes access and interconnection obligations of local exchange carriers."[179]

Thus, the Commission has subject matter jurisdiction to resolve this complaint pursuant to §386.390.1 and 386.400 RSMo. even if Halo were considered a bona fide CMRS provider because there is an issue as to whether Halo is an access customer of AT&T Missouri and the RLEC Respondents.[180] Halo, by delivering such traffic to AT&T Missouri at AT&T Missouri's originating access tandems in the Kansas City, St. Louis, and Springfield LATA tandems has placed traffic on the LEC-to-LEC network as an originating and aggregating carrier. Halo has made itself financially responsible for its traffic that traversed the LEC-to-LEC network by the terms of its ICA with AT&T Missouri, and Halo has thereby brought itself within the jurisdiction of the state of Missouri under the ERE Rule.

c. The ERE Rule

The ERE Rule defines "the LEC-to-LEC network" as "that part of the telecommunications network designed and used by telecommunications companies for the purposes of originating, terminating, and transiting local, intrastate/intraLATA, interstate/intraLATA, and wireless telecommunications services that originate via the use of feature group C protocol . . ."[181] The origination, transit, and termination of traffic utilizing the LEC-to-LEC network is only allowed upon compliance with the ERE Rule.[182] The ERE

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[179] EFIS Docket Entry No. 139, ERE *Order of Rulemaking*, 30 MO Reg, No. 12, p. 1377, citing 47 USC 251(d)(3).

[180] *See* EFIS Docket Entry No. 140, *Order Regarding Subject Matter Jurisdiction*, Case No. TC-2002-57, Feb. 14, 2002.

[181] 4 CSR 240-29.010.

[182] 4 CSR 240-29.030(1).

Rule expressly prohibits certain actions and types of traffic from being placed on the LEC-to-LEC network:

(1) It prohibits the transmission of interLATA wireline traffic over the LEC-to-LEC network. 4 CSR 240-29.010 and 29.030(2);

(2) It prohibits the termination of traffic originated by or with the use of feature group A, B or D protocol trunking arrangements from being terminated on the LEC-to-LEC network. 4 CSR 240-29.030(3);

(3) It prohibits any traffic aggregator from placing traffic on the LEC-to-LEC network except as permitted by Chapter 29. 4 CSR 240-29.030(4);

(4) It prohibits any originating carrier or traffic aggregator from altering or failing to deliver originating caller information for landline-originated traffic placed on the LEC-to-LEC network. 4 CSR 240-29.040(1) and (5);

(5) It prohibits the alteration of record creation, exchange or billing processes currently in place for traffic carried by interexchange carriers using feature groups A, B, or D protocols. 4 CSR 240-29.030(5);

The ERE Rule also contains certain requirements for the creation and exchange of records:

(1) It contains provisions for the use of record creation that terminating carriers could utilize in preparing invoices to bill originating carriers of traffic placed on the LEC-to-LEC network. 4 CSR 240-29.080;

(2) It contains provisions for the exchange of records, invoices, objections to payment of invoices, and dispute resolution procedures for traffic placed on the LEC-to-LEC network. 4 CSR 240-29.090 and 29.100;

The ERE Rule includes blocking provisions as enforcement mechanisms:

(1) It allows AT&T Missouri as a transiting carrier to block traffic of originating carriers or traffic aggregators who failed to comply with the ERE Rule. 4 CSR 240-29.120;

(2) It allows the RLECs here, as terminating carriers, to request AT&T Missouri, as an originating tandem carrier, to block traffic of originating carriers or traffic aggregators. 4 CSR 240-29.130;

(3) It allows an originating carrier or traffic aggregator wishing to dispute a blocking request by either the transiting carrier or the terminating carrier to file a Complaint with the Commission to do so. 4 CSR 240-29.120 and 29.130.

d. The ERE Rule Governs the Missouri LEC-to-LEC Network

The ERE Rule was adopted to govern Missouri's LEC-to-LEC network and ensure the carriers that build and maintain the network receive adequate records and compensation for the traffic that traverses it. The rule was designed to require appropriate records and compensation for such traffic and prevent the sort of abuse Halo has employed. Halo argues that the ERE Rule unlawfully regulates CMRS or "enhanced service" providers. The Commission has already considered and rejected such arguments when it adopted the rule:

> [T]he Enhanced Record Exchange Rules do not regulate wireless carriers, as the Joint Wireless Carriers and Sprint suppose. Rather, what the rules would regulate is use of the LEC-to-LEC network—not the wireless carriers. We find that section 386.320.1, in particular, places an obligation upon the commission to assure that all calls, including calls generated by nonregulated entities, are adequately recorded, billed, and paid for. We reject Joint Wireless Carriers' apparent contention that nonregulated carriers may use the Missouri LEC-to-LEC network without regard to service quality, billing standards, and, in some instances, with an apparent disregard for adequate compensation.... We are not convinced that one carrier's most technological and efficient interconnection should extend to another carrier's financial loss without an agreement. Moreover, we would note [that] Section (d)(3) preserves a state's interconnection regulations. Specifically, this section holds that the FCC may not preclude the enforcement of any regulation, order, or policy of a state commission that establishes access and interconnection obligations of local exchange carriers. We find that the obligation we are imposing on incumbent local exchange carriers is a necessary interconnection obligation on incumbent carriers.
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> [W]e do not believe our rules conflict with federal law, because they have nothing to do with the relationship between a wireless carrier and its customers. Rather, our proposed rules have only to do with the terms and conditions that may be required by those who provide services *to a wireless carrier*, and in particular, transiting service. Our rules are not targeted to the practices of wireless carriers; rather, our rules are targeted to the practices of regulated local exchange carriers and the network employed by them—a matter that *is* under the jurisdiction of this commission. In particular, our proposed rules address use of the LEC-to-LEC network, especially that traffic which is transited to terminating carriers who are not a party to agreements

> made between originating carriers (including but not limited to wireless carriers) and transiting carriers.[183]

Thus, the ERE Rule does not "regulate" wireless carriers or ESPs. Rather, the ERE Rule governs the type of traffic allowed on the Missouri LEC-to-LEC network and the way in which it is handled.

e. Halo Is Placing Telecommunications Traffic on the LEC-to-LEC Network via Its Interconnection with AT&T Missouri for Termination on AT&T Missouri's and RLEC Respondents' Networks

Halo's direct "wireless" interconnection with AT&T Missouri's tandem switches allows Halo to place traffic over the LEC-to-LEC network. Under its interconnection agreement with AT&T Missouri, Halo delivers traffic to AT&T Missouri over the LEC-to-LEC network for termination to AT&T Missouri end-user customers and also to the RLEC Respondents' end user customers (via the "transit" provisions in the ICA).

f. Halo is An "Originating Carrier" and "Traffic Aggregator" for Purposes of ERE Rule

Halo has delivered large volumes of traffic to AT&T Missouri for transmission on the LEC-to-LEC network. Significant amounts of Halo's traffic is landline interexchange traffic for which the LECs' access rates apply. Significant amounts of this landline traffic is interLATA traffic which is prohibited by the ERE Rule. Some of the other traffic is interMTA wireless traffic for which the LECs' access rates apply.

By delivering traffic to the AT&T Missouri tandems, Halo is acting as an originating carrier (a carrier that "is responsible" for originating telecommunications traffic that traverses the LEC-to-LEC network). Halo argues that it is neither an originator nor aggregator of traffic under the ERE Rule.[184] The Commission disagrees and concludes

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[183] EFIS Docket Entry No. 139, ERE *Order of Rulemaking*, 30 MO Reg, No. 12, p. 1377.

[184] EFIS Docket Entry No. 211, Wiseman Direct, p. 33.

that Halo has acted as both an originator and aggregator of traffic by placing telecommunications traffic on the LEC-to-LEC network. Halo has employed its direct connection with AT&T Missouri to place traffic on the LEC-to-LEC network, making Halo directly "responsible for originating telecommunications traffic that traverses the LEC-to-LEC network" as defined by 29.020(29). Moreover, Halo also concedes that it is placing telecommunications traffic on the LEC-to-LEC network "on behalf of another carrier" (Transcom) and thus meets the definition of an aggregator under 29.020(3).

Halo suggests that it is a "transiting" carrier somehow exempt from the Missouri law. Under the ERE Rule, however, only originating tandem carriers perform a transit function when they transport traffic properly comporting with the ERE Rule over the LEC-to-LEC network to the end office of another LEC. Halo's claim it is "transiting" Transcom's traffic to AT&T Missouri is neither contemplated nor permitted by the ERE Rule. Under the ERE Rule, by delivering the traffic in dispute to AT&T Missouri's originating tandem, Halo is acting as both an originator and aggregator of the traffic for purposes of the ERE Rule.

g. Halo's "CMRS license" Has No Consequence

Transcom is routing large volumes of wireline interexchange and interMTA wireless voice calls to its affiliate, Halo. Halo then delivers those wireline and interMTA wireless calls to AT&T Missouri for completion (i.e. "termination") to AT&T Missouri's customers and the RLEC Respondents' customers. Although these voice calls employ the facilities and services of RLEC Respondents, Halo has refused to compensate the RLEC Respondents for these calls even where Halo has been billed at the RLEC Respondents' lowest reciprocal compensation rates.

Halo argues that it has a CMRS license which grants it federal authority and prohibits the Commission from regulating its activities.[185] The evidence indicates Halo has been issued a Radio Station Authorization.[186] There is no evidence that any of the traffic in question was originated by *mobile* wireless customers of Halo. The insertion of a "wireless link" in the call paths did not involve wireless equipment that was capable of moving and ordinarily did move. Under the evidence, it is not clear that any traffic which is the subject of this case was Halo CMRS traffic. Rather, the evidence establishes that the majority of Halo's traffic is wireline-originated interexchange traffic. Regardless of the nature of Halo's license, and regardless of whether Halo may operate as a CMRS provider, Halo has improperly placed interexchange landline traffic and interMTA wireless traffic on the LEC-to-LEC network.

The FCC's *Connect America Fund Order*[187] rejected Halo's arguments and found that Halo's practices did not convert landline calls into something else. Specifically, the FCC held, "[T]he 're-origination' of a call over a wireless link in the middle of a 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."[188]

Therefore, the Commission's determination that Halo has violated the ERE Rule is based upon Halo's actual operations and improper use of the LEC-to-LEC network in Missouri rather than Halo's claimed status as a CMRS provider. The ERE Rule was established to address and prevent such improper activity.

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[185] EFIS Docket Entry No. 72, Halo Exhibit A, Wiseman Direct, pp. 26-28.

[186] Halo Exhibits 2 and 2A.

[187] *In the Matter of the Connect America Fund*, WC Docket No. 10-90 et al., *Report and Order*, released Nov. 18, 2011.

[188] *Id*. at ¶1006.

2. Halo Has Placed InterLATA Wireline Telecommunications Traffic on the LEC-to-LEC Network

The record demonstrates and the Commission concludes that Halo has delivered large volumes of telecommunications traffic via the LEC-to-LEC network to AT&T Missouri for termination to AT&T Missouri customers and for termination to the customers of Craw-Kan et al. and Alma et al. As previously discussed, AT&T Missouri's traffic studies demonstrate that significant proportions of the Halo traffic were originated as landline calls. This traffic terminated to landline customers of AT&T Missouri, Craw-Kan et al., or Alma et al., and thus were landline to landline interexchange calls.

The Commission further concludes that AT&T Missouri's traffic studies demonstrate that significant proportions of these landline to landline calls were interLATA in jurisdiction, as the calls originated in LATAs that were different than the LATAs in which the calls terminated. Halo's delivery of interLATA landline to landline calls to AT&T Missouri on the LEC-to-LEC network violated 4 CSR 240-29.010 and 4 CSR 240-29.030(2) of the Commission's ERE Rule. In addition, interLATA landline to landline calls were originated by or with the use of Feature Group D protocol trunking arrangements, and Halo's delivery of such calls to AT&T Missouri on the LEC-to-LEC network violated 4 CSR 240-29.030(3).[189]

3. Halo Has Failed To Compensate the RLEC Respondents for Traffic it is Delivering to Them for Termination Pursuant to Halo's Interconnection Agreement with AT&T Missouri

As the Commission has previously concluded, significant portions of the Halo traffic were landline to landline interexchange calls. To the extent these landline interexchange calls were originated in one state and terminated to another state, they are subject to the

[189] Tr. 399, Re-Cross of Craw-Kan et al. witness for McDonald County Telephone, Jack Rickett.

interstate access tariffs and charges of the Respondents. To the extent these landline interexchange calls originated in Missouri and terminated in Missouri, they are subject to the Missouri intrastate access tariffs and charges of the Respondents.[190]

The Commission also concludes that AT&T Missouri's traffic studies demonstrate that significant proportions of the Halo traffic were originated as wireless calls by customers of Commercial Mobile Radio Service providers other than Halo. This traffic terminated to landline customers of AT&T Missouri, Craw-Kan et al., and Alma et al., and thus were wireless to landline calls. Whether wireline or wireless, and whether local or interexchange, all of the traffic Halo delivered to AT&T Missouri and the RLEC Respondents is "compensable traffic" pursuant to 4 CSR 240-29.020(8) ("telecommunications traffic that is transited or terminated over the LEC-to-LEC network, for which the transiting and/or terminating carrier is entitled to financial compensation.")

AT&T Missouri's traffic studies further demonstrate that significant proportions of these wireless to landline calls were interMTA in jurisdiction, as the calls originated in MTAs that were different than the MTAs in which the calls terminated. To the extent the wireless to landline interMTA Halo calls originated in one state and terminated in another state, they are subject to the interstate access tariffs of the Respondents. To the extent the wireless to landline interMTA calls originated in Missouri and terminated in Missouri, they are subject to the intrastate access tariffs of the Respondents.[191]

By sending landline interexchange traffic, and by sending wireless interMTA traffic, Halo has used its direct interconnection with AT&T Missouri, and its indirect interconnections with Craw-Kan et al. and Alma et al. in a manner such that Halo knew it

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[190] See e.g. EFIS Docket Entry No. 143, *BPS Telephone Company et al. v. Voicestream Wireless Corp*., Case No. TC-2002-1077, *Report and Order*, issued Jan 27, 2005, pp. 14-15.

[191] *Id*. at pp. 16-17.

would receive terminating exchange access services from AT&T Missouri, Craw-Kan et al., and Alma et al. Halo intended to receive terminating exchange access services from AT&T Missouri, Craw-Kan et al., and Alma et al. Halo did in fact receive terminating exchange access services from AT&T Missouri, Craw-Kan et al., and Alma et al. Thus, as the Commission has previously concluded, Halo constructively ordered terminating exchange access services from AT&T Missouri, Craw-Kan et al., and Alma et al.

Halo has refused to pay AT&T Missouri its terminating exchange access tariff rates for this non-local Halo traffic terminating to AT&T Missouri. Halo has only paid AT&T Missouri its reciprocal compensation rate set forth in the Halo-AT&T interconnection agreement. Halo has also refused to pay Craw-Kan et al. or Alma et al. anything for this non-local Halo traffic terminating to Craw-Kan et al. and Alma et al. By failing to pay AT&T Missouri, Craw-Kan et al., and Alma et al., terminating exchange access tariff rates for this non-local Halo traffic, Halo violated the provisions of 4 CSR 240-29.090 and 29.100.

4. Halo Did Not Deliver Appropriate Originating Caller Identification

The Commission's ERE Rule defines originating caller identification as the "10 (10-digit) telephone number of the caller who originates the telecommunications that is placed on the LEC-to-LEC network. This feature is also known as Caller ID, Calling Number Delivery (CND), Calling Party Number (CPN), and Automatic Number Identification (ANI)."[192] In other words, originating caller identification is the calling party number or CPN of the end user who places the call. As the Commission has previously concluded, the traffic Halo is placing on the LEC-to-LEC network does not originate with its customer Transcom but with the end user who actually initiated the call. Therefore, the Commission concludes that the appropriate originating caller identification to be included in the calls

[192] 4 CSR 240-29.020(28).

Halo is putting on the LEC-to-LEC network for delivery to Respondents is the CPN of the calling party who initiated the call.

The Commission's ERE Rule also prohibits carriers that use the LEC-to-LEC network from substituting any number other than the telephone number of the end user responsible for originating the call:

> The originating telephone number shall be the telephone number of the end user responsible for originating the telephone call. Under no circumstances in Sections (1), (2), (3), (4) and (5) above shall any carrier substitute an originating telephone number other than the telephone number of the end user responsible for originating the telephone call.[193]

In this case, it is clear, and Halo admits, that for a period of time beginning in approximately mid-February, 2011 through late December, 2011, it was placing a Charge Number that it assigned to Transcom in the record for each call delivered to AT&T Missouri for termination on the LEC-to-LEC network. As the Commission previously found when the call record information includes both a CPN and a CN, the CN overrides the CPN and controls how the call is categorized and billed. By inserting the inaccurate CN, Halo masked the true nature of the calls it was sending to AT&T Missouri and RLEC Respondents. It was only after AT&T Missouri and several RLECs conducted special, time-consuming, and expensive analyses that the true nature of the calls was discovered.

The Commission concludes the only apparent reason for Halo's insertion of the inaccurate CN in the call record was to make the long distance landline calls that Halo sent to AT&T Missouri appear to be local wireless calls, and therefore avoid access charges for what was actually non-local traffic. Therefore, by inserting an inaccurate CN in the call record, Halo has violated the Commission's ERE Rule prohibiting a carrier from substituting

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[193] 4 CSR 240-29.040(6).

an originating telephone number other than the telephone number of the end user responsible for originating the telephone call. 4 CSR 240-29.040(6).

5. Blocking of Halo's Traffic in Accordance with the ERE Rules

Blocking or disconnection from the network is the appropriate remedy under the ERE Rule (as well as longstanding legal precedent) for customers, including other carriers, that do not pay their bills. The right to block calls or disconnect service for failure to comply with Commission-approved tariffs has been consistently upheld by the Missouri Court of Appeals.[194] Similarly, the FCC has explained, "the law is clear on the right of a carrier to collect its tariffed charges, even when those charges may be in dispute between the parties."[195] The Georgia Public Service Commission, South Carolina Public Service Commission, Tennessee Regulatory Authority, and Public Service Commission of Wisconsin have all granted similar relief -- authority to stop accepting traffic from Halo.[196]

The Commission observes that blocking of Halo's traffic over the LEC-to-LEC network is a limited remedy that does not prevent Halo from using alternative methods to deliver traffic to Missouri carriers. Rather, blocking under the ERE Rule only prevents Halo's traffic from being transited through the AT&T tandem over Feature Group C (FGC)

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[194] *See e.g*. EFIS Docket Entry No. 169, *State ex rel. Tel-Central of Jefferson City, Inc. v. Public Service Comm'n*, 806 S.W.3d 432, 435 (Mo. App. 1991)("To hold otherwise would mean that a telephone company would be required to serve every customer so long as service was requested whether the customer paid the bill or not."); EFIS Docket Entry No. 165, *Sprint Spectrum v. Missouri PSC*, 112 S.W.3d 20, 26 (Mo. App. 2003)("We disagree that the Act prohibits blocking the traffic of a carrier in default of applicable tariff provisions, such as failing to pay approved rates. . . . It is well established that telephone companies may discontinue service to a customer in default of a tariff, as long as proper notice is given.").

[195] EFIS Docket Entry No. 169, *In the Matter of Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone Company of Missouri*, File No. E-87-59, *Memorandum Opinion and Order*, 4 FCC Rcd 8338, rel. Nov. 29, 1989, ¶9. This FCC decision was affirmed by the U.S. Court of Appeals for the D.C. Circuit in *Tel-Central of Jefferson City, Missouri, Inc. v. FCC*, 920 F.2d 1039 (D.C. Cir. 1990)(concluding that United Telephone Company "was authorized to disconnect Tel-Central's lines for nonpayment of charges.") [EFIS Docket Entry No.170].

[196] EFIS Docket Entry No. 153, *Tennessee Halo Order*, 22; EFIS Docket Entry No. 236, *Georgia Halo Order* at 15 and *South Carolina Halo Order* at 34. The Public Service Commission of Wisconsin has not yet issued its written order.

trunks on the LEC-to-LEC network. The ERE Rule specifically allows Halo to use other methods to deliver traffic:

> In all instances of traffic blocking, originating carriers and traffic aggregators may utilize alternative methods of delivering the blocked traffic to terminating carriers. Such methods may include interconnection agreement negotiations with terminating carriers for transiting traffic, direct interconnection with terminating carriers, or contracting with interexchange carriers for traffic delivery.[197]

Thus, the ERE's blocking provisions are reasonable limitations which generally prohibit carriers from sending interexchange traffic on FGC trunks unless otherwise approved by the Commission.

As the Commission has previously concluded, Halo has violated the provisions of the ERE Rule that prohibit altering originating caller information, that prohibit interLATA landline to landline traffic from being placed on the LEC-to-LEC network, that prohibit the placement of traffic originated by or with the use of Feature Group D protocol trunking arrangements on the LEC-to-LEC network, and that prohibit Halo from failing to pay the appropriate compensation for the traffic it placed on the LEC-to-LEC network.

As a result of these violations, the Commission concludes that blocking of Halo traffic terminating to AT&T Missouri is appropriate pursuant to 4 CSR 240-29.120. Further, as a result of these violations, the Commission concludes that blocking of Halo traffic terminating to Craw-Kan et al. and Alma et al. is appropriate pursuant to 4 CSR 240-29.130.

6. No Claim or Finding of Fraud

At the conclusion of the evidentiary hearing, Commissioner Kenney invited the parties to address his questioning of Staff witness Voight as to whether Transcom was

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[197] ERE Rule, 4 CSR 240-29.130(1).

created for the purpose of avoiding having to pay access charges and, if so, whether that is illegal or merely a permissible clever strategy.[198]

In this case, no party has asserted a fraud claim against Halo or Transcom. Nor has any party sought a decision or ruling as to the state of mind of the creators and incorporators of Halo and Transcom. Therefore, the Commission makes no determination in this case as to whether Halo and Transcom were created for an illegal purpose.

Regardless of why the two companies were created, Halo and Transcom's access compensation avoidance strategy did not permit Halo to lawfully avoid the payment of exchange access compensation due on the traffic in question. It does not matter who created Transcom or Halo, or whether they were created as part of a clever strategy whose goal was the avoidance of payment of access charges. Under the law applicable to the facts of this case, it is the nature of the traffic, and the originating and terminating locations of the calls, that determine whether exchange access is owed.

As the Commission has found above, the landline traffic at issue was interexchange traffic subject to exchange access compensation. The Halo/Transcom strategy to convert landline calls into two separate calls by insertion of a "wireless in the middle" link did not convert the landline calls into intraMTA wireless calls. These calls remained interexchange landline calls subject to exchange access compensation.

Similarly, the interMTA wireless traffic at issue was also subject to exchange access compensation. The Halo/Transcom strategy to convert wireless calls into two separate calls by insertion of the "wireless in the middle" link did not convert interMTA calls into intraMTA calls. These calls remained interMTA wireless calls subject to exchange access compensation.

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[198] Transcript Volume 4, pp. 492-495 and 509-510.

D. Alma et al.'s ICA Complaint

Alma et al. also filed an Application seeking rejection of the transit provisions of Halo's interconnection agreement with AT&T Missouri, as implemented, pursuant to 47 USC 252 (e) (2). As grounds therefore, Alma et al. alleged that the implementation of the transit provisions in Halo's interconnection agreement with AT&T Missouri were contrary to the public interest because they allowed Halo to use rural network facilities without an approved agreement and compensation arrangements in place, and that as a result unlawful discriminations were caused. Craw-Kan et al. intervened in the case, designated as TO-2012-0035. Case number TO-2012-0035 was consolidated with the instant case TC-2012-0331.[199]

The Commission has decided that Halo's actions constituted a material breach of its interconnection agreement with AT&T Missouri. The Commission has also decided that Halo's actions violated the provisions of the ERE Rule. The Commission has authorized and directed AT&T to discontinue the termination of Halo traffic to AT&T Missouri, and to Craw-Kan et al., and to Alma et al. because of such breach and violations. Halo's traffic will no longer terminate to AT&T Missouri, to Craw-Kan et al., or to Alma et al. As the Commission's decision in this order obviates the need to consider the relief requested in TO-2012-0035, no decision is necessary to be rendered by the Commission in TO-2012-0035.

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[199] EFIS Docket Entry No. 55, *Order Regarding Motion to Consolidate, Motion to Dismiss, and Motion to Dismiss AT&T Missouri's Counterclaim*, issued May 17, 2012, p. 4 (recognizing that a single hearing could be utilized to decide both cases and that the relief ordered this case may eliminate the need for additional relief to be ordered in TO-2012-0035).

Final Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts, as it has found them, to the law to reach its conclusions, the Commission has independently and impartially reached the following final decision. Halo has failed to meet its burden to prove its allegations by the preponderance of the evidence. AT&T Missouri, on the other hand, has met its burden to proof the allegations within its counterclaim by the preponderance of the evidence. The substantial and competent evidence in the record as a whole supports the conclusion that Halo has violated the Missouri Enhanced Records Exchange Rule and materially breached its interconnection agreement with AT&T Missouri.

Additionally, Staff, in its brief, states: "Although this was not contained in the issues lists in this case, the Staff wishes to make clear that Halo and Transcom were legally required to be certificated in Missouri prior to the transport of landline telephone calls." Consequently, the Commission will direct its Staff to complete an investigation into any unlawful actions by Halo and Transcom and to file a complaint seeking penalties if the results of Staff's investigation support such action.

THE COMMISSION ORDERS THAT:

1. The Commission's "Notice Regarding Communication and Post-Hearing Procedural Schedule," issued on July 24, 2012, shall be attached to this order and designated Attachment A.

2. Halo Wireless, Inc.'s ("Halo") complaint is denied.

3. Southwestern Bell Telephone Company, d/b/a AT&T Missouri's ("AT&T Missouri") counterclaim is granted.

4. Halo has materially breached its interconnection agreement with AT&T Missouri by sending landline-originated traffic to AT&T Missouri. As a result of this breach, AT&T Missouri is excused from further performance under the parties' interconnection agreement and may stop accepting traffic from Halo.

5. Halo violated the Missouri ERE Rule by failing to pay AT&T Missouri and the RLEC Respondents the applicable access rates for terminating Halo's landline originated interexchange traffic and interMTA wireless originated traffic; failing to deliver appropriate originating caller identification as required by the Rule; and transmitting interLATA wireline traffic over the LEC-to-LEC network. AT&T Missouri is therefore authorized to block Halo's traffic terminating to AT&T Missouri and to the RLECs pursuant to the ERE Rule.

6. Halo is liable, without quantifying any specific amount due, to AT&T Missouri and the RLEC Respondents for access charges on the interstate and intrastate access traffic Halo has sent to AT&T Missouri and the RLEC Respondents. The precise amount due will be an issue for Halo's bankruptcy proceeding.

7. To the extent the record citations and legal arguments in "AT&T Missouri's Brief in Support of Its Proposed Findings of Fact and Conclusions of Law," which was filed on July 23, 2012, supplement the findings of fact and conclusions of law in this order, it is incorporated by reference as if fully set forth. This filing shall be attached to this order as Attachment B.

8. To the extent the record citations and legal arguments in "Staff's Initial Brief," which was filed on July 23, 2012, supplement the findings of fact and conclusions of law in this order, it is incorporated by reference as if fully set forth. This filing shall be attached to this order as Attachment C.

9. The Staff of the Missouri Public Service Commission shall complete an investigation into any unlawful actions by Halo Wireless, Inc. and Transcom Enhanced Services, Inc. and file a complaint seeking penalties if the results of Staff's investigation support such action.

10. This Report and Order shall become effective on August 13, 2012.[200]

11. This file shall be closed on August 14, 2012.

BY THE COMMISSION

Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett, Kenney, and
Stoll, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge

[200] Because of the nature of Halo's ongoing violations, the Commission finds good cause to exercise its discretion and set the date for this order to take effect in less than 30 days. The Commission has the authority to make an order effective in less time than the 30-day statutory period described in Section 386.490.3, RSMo 2000. *Harter v. Missouri Public Service Comm'n*, 361 S.W.3d 52, 57 (Mo. App. 2011).