Patrick W. Turner
General Attorney–South Carolina
Legal Department

AT&T South Carolina
1600 Williams Street
Suite 5200
Columbia, SC 29201

T: 803.401-2900
F: 803.254.1731
pt1285@att.com
www.att.com

June 15, 2012

The Honorable Jocelyn Boyd
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: BellSouth Telecommunications, LLC d/b/a AT&T South Carolina, Complainant/Petitioner v. Halo Wireless, Inc., Defendant/Respondent
Docket No.: 2011-304-C

Dear Ms. Boyd:

Enclosed for filing is AT&T South Carolina's Post-Hearing Brief in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,

Patrick Turner

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
1037327

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

In Re: 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. for Breach of the Parties' Interconnection Agreement	))))))	**Docket No. 2011-304-C**

AT&T SOUTH CAROLINA'S POST-HEARING BRIEF

J. Tyson Covey
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600
jcovey@mayerbrown.com

Patrick W. Turner
AT&T South Carolina
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
(803) 401-2900
pt1285@att.com

TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 3

I. HALO IS BREACHING THE ICA BY SENDING LANDLINE-ORIGINATED TRAFFIC TO AT&T 3

A. The ICA Requires Halo to Send Only Wireless-Originated Traffic to AT&T 3

B. Halo Has Been Sending Large Amounts of Landline-Originated Traffic to AT&T, Which Breaches the ICA and Unlawfully Avoids Access Charges 5

C. Halo's Theory That Transcom Originates All Calls is Baseless 7

1. The FCC Expressly Rejected Halo's Theory 10

2. ESPs Do Not Originate Every Call They Touch 13

3. Transcom is Not an ESP 18

4. Even If Transcom Originated Enhanced Traffic (And It Does Not), the Traffic Would Still Be Landline-Originated Traffic That the ICA Prohibits Halo From Delivering to AT&T 24

II. HALO HAS BREACHED THE ICA BY SENDING INACCURATE CALL INFORMATION 25

III. HALO IS BREACHING THE ICA BY REFUSING TO PAY FOR INTERCONNECTION FACILITIES PROVIDED BY AT&T 29

IV. AT&T IS ENTITLED TO RELIEF FOR HALO'S BREACHES OF ITS ICA 31

A. The Commission Should Authorize AT&T to Discontinue Performance Under the ICA and Stop Accepting Traffic from Halo 32

B. The Commission Should Declare That Halo Is Liable to AT&T for Access Charges on Non-Local Traffic Halo Delivered to AT&T 33

C. The Commission Should Declare That Halo Must Pay AT&T for the Interconnection Facilities AT&T Has Provided 37

CONCLUSION 38

BellSouth Telecommunications, LLC d/b/a AT&T South Carolina ("AT&T" or "AT&T South Carolina") respectfully submits its post-hearing brief in support of its Complaint against Halo Wireless, Inc. ("Halo") for breaches of the parties' interconnection agreement ("ICA").

INTRODUCTION

Halo does not provide service to any end user in South Carolina. Its sole source of revenue is Transcom Enhanced Services, Inc. ("Transcom"), a related entity that aggregates a significant volume of landline, non-local calls that originated on other carriers' networks and delivers those calls to Halo. Halo, in turn, delivers those calls to AT&T for termination to its end user customers and for transport to other carriers, including members of the South Carolina Telephone Coalition ("SCTC"), for termination to their end user customers. But Halo wrongfully refuses to pay AT&T South Carolina, the SCTC's members, and likely other carriers the access charges they are due for terminating those landline, non-local calls that Halo delivers. The ORS's investigation revealed that the only service Halo or Transcom provides to anyone is "access-charge avoidance," and the ORS could discern no way in which Halo's operations benefit the consuming and using public.

The ORS, therefore, joined the SCTC in supporting AT&T South Carolina's request that the Commission authorize AT&T South Carolina to stop accepting traffic from Halo under the ICA. This relief (as well as the additional relief requested by AT&T South Carolina) is warranted because Halo has committed multiple breaches of its ICA with AT&T South Carolina. Granting this relief will not harm any South Carolina consumer, and it will not prevent any calls that used to be routed through Halo from reaching their destinations.

The evidence of Halo's breaches of the ICA is straightforward. The ICA requires Halo to send only wireless-originated calls to AT&T. It is undisputed, however, that a large percentage

of the calls Halo sends to AT&T begin on landline networks. Halo quibbles about the exact percentage of calls that start on landline networks, but that is irrelevant because (i) Halo is not allowed to send *any* landline-originated calls to AT&T under the ICA, so even one such call is a breach (though in fact there are hundreds of thousands of such calls), and (ii) even when AT&T accounted for Halo's quibbles, the call records still showed that a substantial majority of the calls originated on landline networks. And despite the terms of the ICA, Halo has made no effort to stop sending these landline-originated calls.

Halo's only defense is its claim that every call Halo sends to AT&T should be deemed to be originated by Transcom as a local, wireless call, even though most of the calls actually began on landline networks and are not local calls. As shown in AT&T's testimony and this brief, Halo's theory that Transcom originates every call it touches is baseless. The FCC has rejected that theory; the Tennessee Regulatory Authority has rejected that theory; and the theory makes no sense, as Halos' own witness admitted. No one from Transcom dials any of the calls that then go to Halo and AT&T. No one from Transcom takes part in the conversations on those calls. Transcom has no relationship with the calling or called parties on any of those calls. Transcom is merely a middleman, not a call originator. Rather, these calls originate with the actual calling party, *i.e.*, the person who picked up a phone and dialed the number.

If Halo were allowed to "launder" calls and deem them transformed from landline to wireless and long-distance to local merely by having the calls pass through Transcom first, every carrier in the country could set up a similar arrangement, and no one would ever pay access charges. A landline-originated call from Beijing, China to Columbia, South Carolina would be treated as a local wireless call as long as it passed through 150 feet of wireless connection between Transcom and Halo in Orangeburg, South Carolina. That is the obvious consequence of

Halo's theory that Transcom originates every call it touches, and it illustrates why that theory is invalid, how Halo has breached the ICA, and why Halo is liable for access charges on the non-local traffic it sent, and continues to send, to AT&T.

Halo further breached the ICA by inserting improper Charge Number information on all calls it sent to AT&T until the end of 2011, making it look like Transcom was responsible for all the calls and all of the calls were local, even though they were not. Halo's only defense is the same erroneous theory that Transcom actually originates all the calls.

Finally, Halo has breached the ICA by refusing to pay for certain interconnection facilities it obtains from AT&T. It is undisputed that Halo has ordered, obtained, and used such interconnection facilities from AT&T under the ICA. Naturally, then, Halo must also be required to pay for them (although the bankruptcy court will determine the amount due).

For these reasons, and as explained further below, the Commission should hold that Halo has materially breached the ICA and grant the relief requested by AT&T.

ARGUMENT

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

A. The ICA Requires Halo to Send Only Wireless-Originated Traffic to AT&T.

Halo purports to be a wireless carrier. Tr. 354 (Wiseman Rebuttal). Based on this claim, Halo entered into a wireless ICA with AT&T. Tr. 42 (McPhee Direct at 12). The only traffic that 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].

Hearing Ex. 1 (Ex. JSM-5). The "wireless traffic only" provision is important because wireless traffic and landline traffic are regulated differently. Most notably, 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. Tr. 44-45 (McPhee Direct at 14-15). Wireless traffic is classified as local or non-local based on Major Trading Areas ("MTAs"), which are quite large. *Id.* For landline traffic, on the other hand, calls are classified as local or non-local based on "local calling areas," which are much smaller. *Id.* For example, there are only two MTAs in all of South Carolina, so a wireless call from Greenville to Columbia, which is in the same MTA, is local and subject only to reciprocal compensation rates. By contrast, there are more than 240 landline local calling areas in South Carolina, so a landline call from Greenville to Columbia would be subject to the higher access charge rates. Tr. 10. Thus, there is a much greater likelihood that a wireless call will be "local" (also called "intraMTA"), and not subject to access charges, than there is for a landline call.

All of the trunks that Halo ordered to deliver traffic to AT&T were trunks reserved for wireless traffic only. Tr. 175-76 (Neinast Direct at 9-10). Consistent with this, and assuming Halo was complying with the ICA, AT&T billed Halo for termination as if all of Halo's traffic was wireless-originated, as the ICA required. Fairly quickly, however, AT&T began to suspect that much of the traffic Halo was sending it originated on landline equipment, not wireless equipment. *Id.* at 176-77. It therefore appeared that Halo was breaching the ICA and engaging in an access charge avoidance scheme, which led to this complaint case. Tr. 515 (Rozycki Direct at 10) (noting that Halo seems to be seeking "avoidance of the higher priced switched access

charges"); Tr. 525-26 (Rozycki Examination by Commission Staff) (ORS was unable to determine "any service that Halo provides to Transcom, or that Transcom provides to IXCs or anyone else, other than access-charge avoidance."); Tr. 523 (Rozycki Cross-Examination by Halo) ("we don't see any benefit to the consuming and using public" from Halo's operations).

B. Halo Has Been Sending Large Amounts of Landline-Originated Traffic to AT&T, Which Breaches the ICA and Unlawfully Avoids Access Charges.

It is undisputed that Halo has been sending traffic to AT&T that starts on landline networks. Halo freely admits this. Tr. 326 (Wiseman Rebuttal at 19) ("Most of the calls probably did start on other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN."); Tr. 401-02 (Wiseman); Hearing Ex. 1 (Ex. JSM-1 at 5-6). The Office of Regulatory Staff ("ORS") recognized this as well. Tr. 512 (Rozycki Direct at 7) ("Much of the traffic Halo transports originated as wireline telephone calls."). That alone proves a breach of the ICA. And as AT&T's call studies show, the extensive scope of the breach proves it was no accident.

AT&T analyzed the calls Halo sent to it during one-week periods in April 2011 and September 2011. Tr. 179 (Neinast Direct at 13). AT&T 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 started the call. AT&T then consulted the industry's Local Exchange Routing Guide ("LERG") and the North American Number Portability ("NANP") 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. *Id.* at 179-82. Based on this, AT&T was able to determine how many landline-originated calls Halo was sending. *Id.* During the periods reviewed, the call data showed that 64% to 67% of the calls that Halo delivered to AT&T originated as landline calls. *Id.* at 182 & Hearing Ex. 4 (Ex. MN-3). In other words,

even though the ICA did not allow Halo to send AT&T *any* landline-originated traffic, about *two-thirds* of the traffic Halo sent to AT&T was landline-originated.[1]

Although the percentage of landline-originated calls is large and Halo admits to sending AT&T calls that start on landline networks, Halo nevertheless quibbles about the details of AT&T's call analysis. Halo contends that some calls that originate from what appear to be landline numbers could, in some scenarios, actually originate from a wireless device. The scenario Halo relies on is a number that the LERG shows as being owned by Level 3 or Bandwidth.com, which identify themselves as landline carriers in the LERG, but that Level 3 or Bandwidth.com has assigned to Google or Skype, which have services that can be used by customers on wireless devices. Tr. 333-35 (Wiseman Rebuttal at 26-28). 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. *Id.*

Halo is wrong. Halo presented no call analysis of any kind 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. Tr. 212 (Neinast Rebuttal at 9); Tr. 401-02 (Wiseman). Halo's failure to present any such evidence is telling, because Halo had access to all of the same data AT&T used for its analyses. Furthermore, while there are some situations where CPN does not precisely identify the origination point or originating carrier of a call, those situations are the exception, not the rule. Tr. 184-85 (Neinast Direct at 18-19). Simply put, the data and methods AT&T used are the same data and methods that the entire industry uses today

---

[1] "Downstream carriers" such as the SCTC's members are impacted as well. Halo sends long distance traffic to those carriers via an AT&T tandem switch. (McPhee rebuttal at 13.) In fact, AT&T terminates approximately 52% of the traffic it receives from Halo, and delivers approximately 48% to other carriers for termination. (Exhibit MCN-3.) The vast majority (84%) of the traffic delivered to other carriers is destined for the rural LECs like the SCTC's members. (McPhee rebuttal at 14).

for determining what AT&T sought to determine. *Id.* There is no better way, and Halo does not suggest that there is. As the Tennessee Regulatory Authority explained:

> 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.

Order, *In re: BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119 , at 17 (Tenn. Reg. Auth., Jan. 26, 2012) ("*Tennessee Halo Order*"), Hearing Ex. 1 (Ex. JSM-8).

AT&T also proved that Halo's contentions about Level 3 and Bandwidth.com numbers would make no meaningful difference even if they were correct. AT&T assumed for the sake of argument that 100% of calls from Level 3 and Bandwidth.com numbers were actually wireless-originated, and re-analyzed the call data based on that assumption. This was an overgenerous assumption, because not all Level 3 or Bandwidth.com numbers are assigned to Skype or Google. Tr. 185 (Neinast Direct at 19). Even with this assumption, however, the data still showed that 57% to 59% of the traffic that Halo sent to AT&T was landline-originated. *Id.* at 185-86 & Hearing Ex. 4 (Ex. MN-5).

In short, there is no doubt that most of the traffic Halo has been sending to AT&T originated on landline networks. That materially breaches the ICA.

C. Halo's Theory That Transcom Originates All Calls is Baseless.

Halo's only defense is its claim that all the calls it sends to AT&T, regardless of who dialed the number or on what carrier's network the call began, actually should be deemed to originate with Transcom. No one at Transcom dials these calls and neither the calling party nor

the called party on any call is a Transcom customer. Nevertheless, Halo contends that whenever a call passes through Transcom, that call is terminated and Transcom then originates a new, local, wireless call before the call reaches Halo. Tr. 329-32 (Wiseman Rebuttal at 22-25); Hearing Ex. 1 (Ex. JSM-1 at 5-9). To understand this theory, and its many flaws, it helps to back up for a moment and explain what Transcom is and its arrangement with Halo.

Although Halo and Transcom are technically separate companies, they are closely related. They have overlapping officers and overlapping ownership, and the largest individual stakeholder in both companies is the same person. Tr. 36-40 (McPhee Direct at 6-10). Halo worked closely with Transcom and Transcom's counsel to develop its business plan. Tr. 321-24 (Wiseman Rebuttal at 14-17). Transcom is Halo's only paying customer and the source of 100% of Halo's revenues nationwide. Tr. 402 (Wiseman); Tr. 38 (McPhee Direct at 8).

Halo and Transcom are also physically close. Both have equipment at a tower site in Orangeburg, South Carolina, and the arrangement between them works as follows. Every call that comes to Halo in South Carolina first passes from the carrier whose end user customer originated the call to Transcom (typically, indirectly through intermediate carriers) at one of its four switching stations (in Dallas, New York, Atlanta, and Los Angeles.). *See* Tr. 315 (Wiseman Rebuttal at 8); Hearing Ex. 4 (Ex. MN-6)Tr. 38 (McPhee Direct at 8). Transcom then sends the call to its equipment at the Orangeburg tower site, *see* Tr. 315 (Wiseman Rebuttal at 8); Hearing Ex. 4 (Ex. MN-6), where Transcom then transmits the call, wirelessly, for about 150 feet to Halo's equipment. Tr. 262 (Drause Rebuttal at 7). Halo then sends the call on to AT&T South Carolina's tandem switch for termination to an AT&T South Carolina end-user or to be passed on to a third-party carrier for termination. Tr. 260-61 (Drause Rebuttal at 5-6). 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. Tr. 262 (Drause Rebuttal at 7); Tr. 267-70 (Drause). It therefore appears that the only reason Halo spent the money to create 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. *Id.*; Tr. 189-90 (Neinast Direct at 23-24).

To envision how a call flows through this arrangement, assume a call begins with a girl picking up her landline phone in California and dialing her grandmother in Columbia, South Carolina. *See* Tr. 189 (Neinast Direct at 23) & Hearing Ex. 4 (Ex. MN-6). That landline call would travel across the country, eventually hit Transcom's equipment at the Orangeburg tower, travel wirelessly to Halo for 150 feet and then be handed off to AT&T, which would terminate the call in Columbia on its landline network and thus enable the girl and grandmother to talk to each other. *Id.* That call originated with the girl in California, who is the calling party, and is a non-local, landline-originated call, subject to access charges. According to Halo, however, when the girl's call reaches Transcom's equipment in Orangeburg, Transcom terminates the call and then originates a new call to the grandmother that is both local and wireless, and, therefore, is only subject to reciprocal compensation charges. *Id.*; Tr. 315 (Wiseman Rebuttal at 8). Halo makes this argument even though the calling party (the girl who started the call) has no relationship with Transcom, did not dial Transcom's number, has no idea Transcom is even involved with the call, and ends up talking to the person she dialed in the first place (her grandmother) without dialing any extra numbers or codes. Tr. 194 (Neinast Direct at 28); Tr. 407-08 (ORS's cross-examination of Wiseman); Tr. 442 (Johnson Rebuttal at 10).

The "logic" of Halo's "Transcom origination" theory runs as follows:

1. Transcom is an enhanced service provider ("ESP") under federal law.

2. As an ESP, Transcom is treated like an end-user for purposes of access charges.

3. Therefore, Transcom must be treated as an end user for all purposes.

4. Since Transcom is treated as an end user, all calls must be deemed to terminate to Transcom and originate with Transcom.

5. Therefore, a call from California to Columbia that is routed in the manner depicted in Neinast Exhibit MN-6 terminates with Transcom, which then originates a new, wireless call, which passes through Halo and then to AT&T in the same MTA as Transcom.

6. Thus, the call that AT&T receives from Halo originated wirelessly, with Transcom, and Halo is not breaching its ICA.

Halo's theory fails for at least four reasons: (1) the FCC (and TRA) have rejected it; (2) there is no authority for the proposition that ESPs originate every call they touch; (3) Transcom is not an ESP in any event; and (4) even if Transcom were an ESP and did originate calls, the purported "origination" occurs on Transcom's landline equipment, and the calls would therefore be landline-originated (in breach of the ICA) and non-local (and thus subject to access charges).

1. The FCC Expressly Rejected Halo's Theory.

The FCC has rejected Halo's theory. In its recent *Connect America Order*,[2] the FCC singled out Halo by name, described Halo's arrangement of having traffic pass through an alleged ESP (*i.e.*, Transcom) before reaching Halo,[3] noted Halo's theory that calls in this arrangement are "re-originated" in the middle by Transcom, and flatly rejected that theory. The FCC's discussion at paragraphs 1003-06 is worth quoting in full:

> 1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate

---

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

[3] 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; Tr. 49-50 (McPhee Direct at 19-20) & Hearing Ex. 1 (Exs. JSM-6 and JSM-7).

within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. As noted above, this rule, referred to as the "intraMTA rule," also governs the scope of traffic between LECs and CMRS providers that is subject to compensation under section 20.11(b). The *USF/ICC Transformation NPRM* sought comment, *inter alia,* on the proper interpretation of this rule.

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

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA."[4] It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."

1006. We clarify that ***a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider***. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that ***the "re-origination" of a call over a wireless link in***

---

[4] The FCC cited two Halo *ex parte* filings for this description. *Connect America Order*, nn. 2120-22. Those make plain that the alleged ESP is Transcom. *See* Tr. 49-50 (McPhee Direct at 19-20) & Hearing Ex. 1 (Exs. JSM-6 and JSM-7).

the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position. [Emphasis added, footnotes omitted].

The FCC thus 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. Tr. 314, 318-19, 324, and 330-31 (Wiseman Rebuttal at 7 n.1, 11-12, 17 n.11, and 23-24).[5] The FCC said that a call is originated wirelessly only if the "calling party" – the person dialing the phone number – initiated the call through a wireless carrier. The majority of the calls Halo has been sending to AT&T did not originate that way, as Mr. Neinast's call studies showed.

Agreeing with the FCC, the Tennessee Regulatory Authority also rejected Halo's origination theory in a recent decision in favor of AT&T Tennessee on the identical issue. *Tennessee Halo Order* at 15-17 (Hearing Ex.1 (Ex. JSM-8)). Among other things, the TRA found, based on Halo's *ex parte* filings in the *Connect America* case, that the FCC was aware of Halo's theory that Transcom originates (or re-originates) every call it touches, and has rejected that theory. *Id.* The TRA's decision sustaining AT&T Tennessee's claims is thorough and well-reasoned, and AT&T commends it to the Commission's attention.

Finally, it now appears that Halo itself rejects its "Transcom origination" theory. On questioning by Commissioner Mitchell, Halo witness Mr. Wiseman acknowledged that Halo's theory is inconsistent with long-standing practice in the industry and common sense. Specifically, Commissioner Mitchell asked Mr. Wiseman about a call from one landline

---

[5] 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 suggests 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.

customer to another landline customer that is routed, in part, by a micro-radio transmission somewhere in the middle. Tr. 416. Mr. Wiseman testified "[t]he microwave [*i.e.*, wireless] link in that call would not make that call a wireless call." Tr. 417. Mr. Wiseman is right: Halo's injection of a 150-foot wireless transmission in the middle of a call from a landline customer in California to a landline customer in Columbia does not make that call a wireless call.

2. ESPs Do Not Originate Every Call They Touch.

Even if Transcom were an ESP (a claim we refute below), there is no authority for Halo's claim that ESPs terminate every call they touch and then originate a new call. That is not surprising, for the argument defies common sense. If the girl in California picks up her landline phone, dials her grandmother in South Carolina, and they have a conversation, that is one call, not two calls. No new, separate call exists simply because the girl's call passed through Transcom's equipment somewhere along the way. Tr. 58 (Neinast Direct at 28); Tr. 442 (Johnson Rebuttal at 10). As Transcom witness Mr. Johnson stated, "a call has only one point of origination, which is the point at which the call originated. You can't change the call's point of origination." Tr. 472 (Johnson Rebuttal at 40). The only call here is the call from the girl in California to her grandmother in South Carolina – after all, the girl did not call Transcom. The "point at which th[at] call originated" is California, and California is therefore the "only . . . point of origination." *Accord*, Tr. 514 (Rozycki Direct at 9) ("Many of Transcom's so-called wireless/ESP transmissions first originated as traditional telephone calls and were directed to one and only one terminating telephone number. When the receiving party answered, one individual spoke with another individual, a voice communication occurred.").

Halo's theory rests on the idea that ESPs are deemed to be end-users, and therefore (according to Halo) Transcom must be deemed to originate every call that passes through their equipment. Tr. 329-32 (Wiseman Rebuttal at 22-25). Nothing in the law says that. To the

contrary, the FCC has made clear that ESPs "are treated as end-users *for the purpose of applying access charges*"[6] only and "are treated as end users *for purposes of our access charge rules*."[7] Thus, 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*. That does not mean an ESP could use this 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. Moreover, 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 would not apply to Halo anyway.[8]

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.[9] To the contrary, the FCC

---

[6] *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).

[7] *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.

[8] *Northwestern Bell Order*, 2 FCC Rcd. 5986, ¶ 21 (1987); *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); *Pacific Bell Tel. Co. v. Global NAPs Cal., Inc.*, D.09-01-038, Order Denying Rehearing of D.08-09-027, at 11, 2009 WL 254838, at *5 (Cal. P.U.C. Jan. 29, 2009) ("the [ESP] exemption applies only to the ESP itself, not to the carrier of ESP traffic"); *In re Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas*, Order No. 16, Dkt., Nos. 06-BTKT-365-ARB et al., 2005 Kan. PUC LEXIS 868 *26-27 (Kan. Corp. Comm'n 2005) ("that [ESP] exemption applies to the information service provider, not to carriers . . . that provide service to ESPs and other customers"). Thus, regardless of Transcom's alleged status, there is no basis for *Halo* to claim it is exempt from access charges on the toll traffic it has been sending to AT&T.

[9] 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. Tr. 329-32 (Wiseman Rebuttal at 22-25). But Halo does not cite a single FCC decision, or any decision by any other entity, 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. *Id.* at 314-15. That alleged comparison to a Leaky PBX is telling, because the FCC long ago recognized that leaky PBXs – just like Halo's and Transcom's current scheme – constituted a form of "access charge avoidance" that needed correction. *MTS and WATS Market Structure*, 97 FCC 2d 682, ¶ 87 (1983). *See also* Tr. 190-91 (Neinast Direct at 24-25). Simply put, the only time the

rejected Halo's theory that Transcom originates calls in the *Connect America Order* (¶¶ 1005-06). The FCC also rejected a similar two-call theory several years earlier. In that case, legacy AT&T (pre-BellSouth merger AT&T) provided a calling card service where, during call set-up, the calling party heard an advertisement from the retailer that sold the card. *AT&T Calling Card Order*, 20 FCC Rcd. 4826, ¶ 6.[10] Legacy AT&T argued that this was an enhanced service and that the "first stage of the call," where the caller heard the advertisement, was "separate from the communication between the calling party and the called party," and therefore "created an endpoint" that "divided [the] calling card communication into two calls." *Id.*, ¶¶ 8, 23. The FCC rejected that view, finding that the communication with the alleged enhanced service platform (the advertising message) did not "create an endpoint" and that communication of the advertising message was merely "incidental" to the single call the end user made. *Id.*, ¶ 23. Here, of course, there is no communication at all between Transcom and the calling or called party (*see* Tr. 442 (Johnson Rebuttal at 10)), so there is even less basis for claiming that Transcom creates an endpoint or originates a new call. Indeed, AT&T witness Mr. Drause explained that Transcom's equipment is not even *capable* of originating a call, for it does nothing more than convert IP data into a radio signal. Tr. 263 (Drause Rebuttal at 8). The ORS agrees that Transcom does not originate calls. Tr. 510 (Rozycki Direct at 5) ("Transcom cannot be classified as an originating or terminating end user").

Halo also tries to support its "Transcom origination" theory by citing *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), claiming that the court there functionally held that

---

FCC has actually addressed what Halo does is in the *Connect America Order*, where it rejected the identical argument Halo is making here.

[10] 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 (2005) ("*AT&T Calling Card Order*"), *aff'd*, *AT&T Corp. v. FCC*, 454 F.3d 329 (D.C. Cir. 2006).

every ESP is an "origination" "endpoint" on every call. Tr. 314-15, 330-31 (Wiseman Rebuttal at 7-8, 23-24). But the decision said nothing of the kind, and in any event has no bearing here. The FCC obviously was well aware of the D.C. Circuit's *Bell Atlantic* decision when it issued the *Connect America Order*, but still rejected Halo's theory that all calls originate with Transcom. *Connect America Order*, ¶¶ 1005-06.[11] The court in *Bell Atlantic* also was not dealing with ESPs in general, but rather was dealing with Internet Service Providers ("ISPs") in particular, so its discussion cannot be generalized to all alleged ESPs. Transcom is not an ISP. Moreover, contrary to Halo's claim, the D.C. Circuit did not actually hold that ISPs are an origination "endpoint." Rather, it merely remanded to the FCC to consider that alternative as a possible way to look at what those providers do, and on remand the FCC took a different path, so it never had to address the issue.

In addition, Halo's assumption that the D.C. Circuit's discussion of Internet Service Providers in *Bell Atlantic* applies to every ESP is misplaced. For example, in the *AT&T Calling Card Order* the FCC rejected an attempt to compare the "enhanced" calling card service with calls to Internet Service Providers ("ISP-bound calls"). The FCC found that the services were not analogous, because while calls to ISPs "may consist of multiple communications," a call from a calling card user is different, because "the only relevant communication" in that situation "is from the calling card caller to the called party." *AT&T Calling Card Order*, ¶¶ 25-26. The same analysis applies here, where "the only relevant communication" is between the calling party and the called party.[12]

---

[11] The FCC also was well aware of the *Bell Atlantic* decision when it issued the *AT&T Calling Card Order*, which rejected the similar argument that an alleged ESP must be deemed to be an origination "endpoint" on calls initiated by others. *AT&T Calling Card Order*, ¶¶ 8, 23.

[12] When an ISP's customer seeks to establish a dial-up connection to the internet, he or she dials the ISP's phone number. This is starkly different from the situation here, where the calling party does not dial Transcom's phone number, and does not even know that Transcom exists. Thus, even if one were to conclude that an ISP terminates its

Halo's testimony also discusses, at some length, certain decisions by bankruptcy courts during Transcom's bankruptcy proceeding several years ago. Halo relies on these rulings for the proposition that Transcom is an ESP under federal law. Tr. 321-24 (Wiseman Rebuttal at 14-17). Those decisions are irrelevant here. Only one of these decisions both involved an AT&T entity and actually held (incorrectly) that Transcom is an ESP. *See* Hearing Ex. 7 (Johnson Rebuttal, Ex. 1). That decision, however, was ***vacated on appeal*** and carries no precedential or preclusive effect here. *See id.* at 1 (upper right-hand corner); *Kosinski v. C.I.R.*, 541 F.3d 671, 676-77 (6th Cir. 2008) (collecting cases).[13] The Pennsylvania and Tennessee commissions have already evaluated this same issue and found that the bankruptcy rulings have no preclusive effect. *See Tennessee Halo Order* at 22 n.85.

More fundamentally, even if Transcom were an ESP, and deemed to be an end-user for purposes of access charges, that would only make a difference in this case if Transcom were therefore deemed to originate (and transform to wireless) every call it touches, regardless of where or on what type of network the call began. None of the bankruptcy rulings addresses, much less decides, that origination issue, which means those decisions have no bearing on this case.

Finally, Halo has argued that even if Transcom is not an ESP, it still must be deemed to originate every call it touches. Halo claims that every entity must either be a common carrier or an end-user, that Transcom is not a common carrier and therefore must be an end-user, and therefore that Transcom originates every call it touches. That theory has no merit even if

---

customer's call and then originates a further communication with the internet, it by no means follows that Transcom performs a similar termination and origination.

[13] 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.*, RESTATEMENT (SECOND) OF JUDGMENTS, § 16 comment c.

Transcom were deemed to be an end-user. While it is true that end-users *can* originate calls, there is no legal or logical support for the idea that an alleged end-user must be deemed to originate every call it touches – especially when the call was started by someone else and all the alleged "end-user in the middle" does is pass the call along to Halo. Indeed, if Halo's theory were correct it would mean an end to all access charges, since every carrier would simply have all their calls first pass through an alleged "end-user" in the same local area where the call will be terminated, and then claim that by passing through that "end-user" every single call was originated as a local call. That would be absurd.

3. Transcom is Not an ESP.

Even though Halo's theory fails regardless of whether Transcom is an ESP, the fact is that Transcom does not qualify as an ESP. To be an ESP, Transcom must provide an "enhanced service." The FCC defines "enhanced services" 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.

47 C.F.R. § 64.702(a). 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.[14] The FCC typically describes services that do not alter the fundamental character of the telephone service as

---

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

"adjunct-to-basic," meaning they are not "enhanced services." *See AT&T Calling Card Order*, ¶ 16 & n.28.[15]

Transcom claims that 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. Tr. 449-50 (Johnson Rebuttal at 17-18). In other words, Transcom does not in any way alter or add to the content of any call. Rather, the parties still say their own words and that is all that gets transmitted. Transcom just tries to make the voice communications more clear. Tr. 497-98 (Johnson). As AT&T's Mr. Neinast explained, 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). Tr. 193-94 (Neinast Direct at 27-28); Tr. 220-22 (Neinast Rebuttal at 17-19).

The FCC's decisions likewise show that Transcom is not providing enhanced service. In the *AT&T Calling Card Order*, for example, legacy AT&T argued that a calling card service was "enhanced" because, during call set-up, the caller heard an advertising message from the retailer that sold the card and was given options to push buttons to do things other than complete the call (*e.g.* buy more calling minutes on the calling card), and also because some of the transport of the call was over AT&T's Internet backbone using Internet Protocol ("IP") technology. *AT&T*

---

[15] Halo has argued that Transcom's service technically cannot be "adjunct-to-basic" because Transcom does not provide basic telephone service. Tr. 384-85 (Wiseman Surrebuttal at 7-8). That is both 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.

Calling Card Order, ¶¶ 6, 11-12. The FCC held that this service was not "enhanced" under FCC Rule 64.702. *Id.*, ¶ 16. As the FCC explained:

> Because the advertising message is ***provided automatically, without the advance knowledge or consent of the customer, there is no "offer" to the customer of anything other than telephone service, nor is the customer provided with the "capability" to do anything other than make a telephone call.***
>
> . . . We find that the advertising message provided to the calling party in this case is incidental to the underlying service offered to the card-holder and does not in any way alter the fundamental character of that telecommunications service. From the customer's perspective, the advertising message is merely a necessary precondition to placing a telephone call . . . .

AT&T Calling Card Order, ¶¶ 15-16 (emphasis added).

The same analysis applies to Transcom's service, which is even more invisible to the calling party. 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. Tr. 442 (Johnson Rebuttal at 10). Nor does the calling party receive from Transcom (or from their own carrier) "anything other than [the capability to] make a telephone call." *Id.*, ¶¶ 16-17.

Moreover, the FCC noted that none of the packaging material for the calling card service in the *AT&T Calling Card Order* mentioned the alleged enhancement of using the cards to listen to advertisements, which led the FCC to conclude that no enhancement or special capability was being "offered" to customers. *AT&T Calling Card Order*, ¶ 15. The same is true here, because none of Transcom's written marketing materials makes any mention of the alleged "enhancements" that Transcom provides, so there is no "offering" of any enhancement. Tr. 222 (Neinast Rebuttal at 19). To the contrary, Halo witness Mr. Johnson conceded during the ORS's cross-examination that the end-user making the call is not "allow[ed] . . . the option of choosing enhancement or not enhancement." Tr. at 495. Indeed, until recently Transcom's website flatly

stated that Transcom's "core service offering" is "Voice Termination Service," *not* any alleged service enhancements. Tr. 65 (McPhee Rebuttal at 4). And until recent changes made in response to AT&T's testimony, Transcom's website never mentioned any alleged "enhancements" to service quality at all. *Id.* at 66. Likewise, the supposed "enhancements" are so incidental that they are not even mentioned in Transcom's contracts with its customers. *See* Tr. 183 (Neinast Rebuttal at 17). It is difficult to take Transcom's claims about enhancing calls seriously when Transcom itself did not find them worth mentioning in its marketing materials, customer contracts, or website. At best, then, whatever Transcom does is merely "incidental" to the underlying telecommunications service provided by the calling party's carrier, and therefore does not qualify as an enhanced service. *AT&T Calling Card Order*, ¶ 16 & n.28.

The FCC's *IP-in-the-Middle Order* further shows why Transcom's service is not an "enhanced service." In that case, the FCC held that AT&T's IP telephony service was not an enhanced service, finding that it "(1) use[d] ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originate[d] and terminate[d] on the public switched telephone network (PSTN); and (3) under[went] no net protocol conversion and provide[d] no enhanced functionality to end users due to the provider's use of IP technology."[16] As the FCC put it, "[e]nd-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service," which mean that the IP-in-the-middle service was no an enhanced service. *IP-in-the-Middle Order*, ¶ 15.

All of those things are also true of Transcom's service. The end-users that make calls do not order a different service (indeed, they do not order any service from Transcom (Tr. 442

---

[16] *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 1 (2004) ("*IP-in-the-Middle Order*").

(Johnson Rebuttal at 10[17])); they 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." *AT&T Calling Card Order*, ¶ 16.[18] *See also* Tr. 513-14 (Rozycki Direct at 8-9) (discussing same order).

These are but a few examples of decisions holding that services offering much more to the calling party than Transcom's service does still are not enhanced services. There are many others. *See* Order, *In the Matter of Federal-State Joint Board on Universal Service*, 22 FCC Rcd. 11811, ¶¶ 3, 6-9 (Wireline Competition Bureau, 2007) (applying same factors to find that a service providing "supplements to the information typically provided on a caller ID display," such as "advertisements, the time, date, and temperature, account balance, available talk time, and other customized messages" and other functionalities was not enhanced, but was merely "adjunct-to-basic," because the functionalities "do not in any way alter the fundamental character of that telecommunications service"); *The Time Machine*, 11 FCC Rcd. 1186, ¶ 40 (Common Carrier Bureau 1995) (provision of information regarding the time remaining on a calling card is

---

[17] Transcom does not serve any actual end users. Rather, it provides wholesale service to carriers and other providers. Tr. 442 (Johnson Rebuttal at 10). Thus, "Transcom does not deal with ultimate consumers [*i.e.*, 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." *Id.*

[18] 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 Columbia, involve transmission "between or among points specified by the user" (the girl specifies her landline phone in California and her relative's phone in Columbia), 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 relative in Columbia.

"incidental to the provision of basic communications services, and therefore is not an enhanced service"); John T. Nakahata, *Regulating Information Platforms: The Challenge of Rewriting Communications Regulation From the Bottom Up*, 1 J. Telecomm. & High Tech. Law 95, 108 n.52 (2002) (noting that FCC has classified services such as "speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller ID, call tracing, call blocking, call return, repeat dialing and call tracking" as "adjunct-to-basic" service, not enhanced service).[19]

Consistent with the FCC precedent, two state commissions have now held that Transcom's service is not an enhanced service. In a Pennsylvania case, a carrier called Global NAPs ("GNAPS") argued that Transcom was as ESP, making all the same claims that Transcom and Halo make here. The Pennsylvania PUC disagreed and held that Transcom is not an ESP, stating as follows:

> GNAPs argues that Transcom's removal of background noise, the insertion of white noise, the insertion of computer developed substitutes for missing content, and the added capacity for the use of short codes to retrieve data during a call all constitute "enhancements" to the traffic that Transcom passes on to GNAPs. [citation omitted] Palmerton responds that the removal of background noise, the insertion of white noise, and the reinsertion of missing digital packets of an IP-enabled call in their correct location when all the packets of the call become assembled are

[19] Halo has suggested that Transcom's service must be an enhanced service under the so-called "contamination" doctrine. Tr. 331 (Wiseman Rebuttal at 24 n.20); Tr. 383 (Wiseman Surrebuttal at 6). That doctrine does not apply here. The "contamination doctrine" is an FCC-created concept that applies to protocol processing services by value-added network service providers ("VANs"). The doctrine provides that when such carriers offer enhanced protocol processing services in conjunction with basic transmission service, the enhanced service component "contaminates" the basic service component and that such services, when combined with basic telephone service provided by the same carrier, "contaminate" the telephone service such that the entire service is treated as an "enhanced" service. *Independent Data Comms. Mfrs. Ass'n, Inc.*, 10 FCC Rcd. 13717, at ¶ 18 (1995); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 1986 WL 291966, at n.52 (1986). Thus, in order for that doctrine to apply, the "contaminating" service must itself be an enhanced service under FCC Rule 64.702. *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 1986 WL 291966, at ¶¶ 43-44 (noting that if some protocol processing services were defined as not being "enhanced" services, the contamination doctrine would no longer apply to the underlying basic service component). As shown in the text, however, Transcom's service is not an enhanced service under FCC Rule 64.702 and FCC precedent, so there is no "contamination" of anything.

> essentially ordinary "call conditioning" functionalities that are "adjunct to the telecommunications provided by Transcom, not enhancements," and that similar call conditioning has been practiced for a very long time even in the more traditional circuit-switched voice telephony. . . . .
>
> In view of the evidence presented and the FCC's rulings in the two AT&T cases referenced above [the *AT&T Calling Card Order* and the *IP-in-the-Middle Order*], we find that Transcom does not supply GNAPs with "enhanced" traffic under applicable federal rules. Consequently, such traffic cannot be exempted from the application of appropriate jurisdictional carrier access charges.[20]

Similarly, in the recent ICA complaint case brought by AT&T Tennessee against Halo, the TRA held that Transcom is not an ESP. The TRA found that:

> 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.

Tennessee Halo Order, at 21-22. The Pennsylvania and Tennessee Commissions' analyses apply with equal force here, and this Commission should reach the same result: Transcom is not an ESP.

4. Even If Transcom Originated Enhanced Traffic (And It Does Not), the Traffic Would Still Be Landline-Originated Traffic That the ICA Prohibits Halo From Delivering to AT&T.

Halo's theory is that Transcom performs certain purported "enhancements" on the calls it receives from other carriers and then "originates" the allegedly "enhanced" traffic for delivery to

---

[20] *Palmerton Tel. Co. v. Global NAPS South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2010 WL 1259661, at 16-17 (Penn. PUC, Feb. 11, 2010).

Halo. For all of the reasons set forth above, Transcom neither performs enhancements nor originates traffic. Even if that were not the case, however, the allegedly "enhanced" traffic necessarily would "originate" from the same location that Transcom performed the "enhancements," and Halo's own witness testified that these enhancements take place in Atlanta, Georgia.[21] So even if Transcom did originate "enhanced" traffic, it would originate that traffic in Atlanta, Georgia over landline facilities (remember, the only wireless link in the entire call flow is the 150-foot wireless transmission that occurs in Orangeburg).

This is significant for two reasons. First, even if Transcom did originate enhanced traffic, such traffic would originate over landline (not wireless) facilities, and the ICA prohibits Halo from delivering landline-originated traffic to AT&T. Second, traffic that originates in Atlanta and terminates in Columbia is non-local traffic to which access charges apply.

II. HALO HAS BREACHED THE ICA BY SENDING INACCURATE CALL INFORMATION.

The exchange of accurate call detail information between interconnected carriers is essential. This information includes 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"). Tr. 198-99 (Neinast Direct at 32-33). A Charge Number might be used, for example, when a business has 100 different lines for its employees but wants all calls on those lines to be billed to a single

---

[21] On cross-examination by ORS, Halo witness Mr. Johnson explained how Halo and Transcom would handle a call that a Comcast end-user in Greenville placed over a landline device to an AT&T end user in Charleston. Tr. 493-94. Halo's witness testified that Comcast would deliver that call to Transcom in Atlanta, Georgia, and Transcom would then deliver that call to Halo. *Id.* On cross-examination by AT&T, Mr. Johnson testified that the "enhancements" Transcom purports to make to the call take place in Atlanta. Tr. 498. Transcom has three other switching stations in addition to the one in Atlanta (these other data centers are in New York, Los Angeles, and Dallas), Tr. 38 (McPhee Direct at 8), and it is conceivable that what Halo erroneously refers to as "enhancements" could take place at any of these data centers. Regardless of the data center at which the purported "enhancements" occur, however, a transmission that purportedly "originates" from that that data center would not be local to South Carolina.

number. *Id.* 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 for the call. *Id.* 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. *Id.* at 199. Specifically, the CN is used to determine the jurisdiction and rating for the call – that is, whether the call is local or non-local, and therefore whether it is subject to reciprocal compensation or access charges.

The ICA requires call information like CPN and CN to be accurate so the parties can accurately bill one another. Tr. 52-53 (McPhee Direct at 22-23) & Hearing Ex. 1 (Ex. JSM-4 at § XIV.G). AT&T, however, has discovered that until the end of 2011, Halo inserted inaccurate CNs – CNs that should not have been there at all – on every call that Halo sent to AT&T. Specifically, Halo admits that it inserted a CN assigned to Transcom into the call record on every call it sent to AT&T. Tr. 338 (Wiseman Rebuttal at 31); Tr. 407 (Wiseman); Tr. 200 (Neinast Direct at 34). Moreover, in every case the CN was local to (*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 rather than access charges – even when the call was not local. Tr. 200 (Neinast Direct at 34). For example, a call destined to Columbia may begin in California and would therefore have a California CPN, but Halo would insert a CN that is local to Columbia into the call information and thereby make the call appear to be local rather than long-distance. *See* Tr. 200 (Neinast Direct at 34) & Hearing Ex. 4 (Ex. MN-7).

There was no justification for Halo's insertion of a Transcom CN, because Transcom was not the financially responsible party on any of these calls. A CN is used when one party (say, an employer) takes financial responsibility for calls made by another party (say, its employee).

Here, however, it is undisputed that there is *no* relationship between Transcom and any of the calling parties that made these calls (Tr. 407-08 (ORS's cross-examination of Wiseman); Tr. 442 (Johnson Rebuttal at 10)), and therefore Transcom is *not* the financially responsible party on any of these calls, because Transcom does not pay the phone bills for any of those calling parties. Halo therefore violated the ICA and industry practices for call information.

Halo tries to excuse its conduct with the same argument as on the origination issue, namely that Transcom should be deemed to originate all calls and therefore is financially responsible for them. Tr. 340 (Wiseman Rebuttal at 33). But Transcom does not originate calls, as shown above. Furthermore, Halo's theory makes no sense. If Transcom actually originated the call, as Halo claims, its number would have shown up in the CPN field (Calling Party Number), not the CN field. The CN field is only used when a party *other than* the party that originated the call will be financially responsible for the call. Consequently, Halo's theory that it inserted the Transcom CN to comply with its view of how the industry treats CN is not credible. As the FCC stated, the CN field "may not contain or be populated with a number associated with an intermediate switch, platform, or gateway," yet that is what Halo did. *Connect America Order*, ¶ 714. In addition, Transcom has no relationship with any of the individuals that actually originate any of these calls, and no reason – or authorization – to have Halo insert a CN to make Transcom financially responsible for these calls originated by strangers through their own separate carriers. Thus, as the TRA recognized, Halo's insertion of a Transcom Charge Number breached the ICA. *Tennessee Halo Order*, at 18.

Halo contends that its breach of the ICA caused no harm to AT&T, but that argument has no merit. Halo first claims there was no harm because the ICA says that AT&T will bill Halo for termination of wireless calls based on a factor for the percentage of calls to be treated as

interMTA, rather than billing on a call-by-call basis. Wiseman Rebuttal at 32. That theory fails because the ICA allows that factor to be adjusted based on the actual traffic sent by Halo. McPhee Rebuttal at 24 & Hearing Ex. 1 (Ex. JSM-4, § VII.D). As noted above, the industry practice is to determine the local or non-local nature of the traffic based on the CN (when both CPN and CN are present). Inserting an inaccurate CN thus made it more difficult for AT&T to evaluate Halo's traffic (and, indeed, AT&T might never have discovered that the CN was inaccurate if it had not been investigating whether any of Halo's traffic was landline-originated). Tr. 193-94 (Neinast Rebuttal at 27-28).

Halo also asserts there was no harm to AT&T because the call records that Halo sent to AT&T included the CPN as well as the CN, so AT&T still had the data needed to determine the call's actual starting point. Tr. 339 (Wiseman Rebuttal at 32). That, however, is akin to a burglar saying he cannot be convicted because he left behind fingerprints that allowed the police to identify him. It is true that, *once it discovered* there was a need to investigate Halo's call information and undertook the cost and burden of conducting that investigation, AT&T was able to use the CPN to determine the true nature of the calls coming from Halo. That is why this complaint case exists. The point, however, is that AT&T had to conduct a special investigation to do that, because otherwise the industry practice is to treat CN as overriding the CPN. By inserting the inaccurate CN, then, Halo masked the true nature of the calls it was sending AT&T until AT&T did the detective work to unmask it. The only apparent reason for Halo's inserting the inaccurate CN was to make the long-distance landline calls that Halo sent to AT&T appear to be local wireless calls, and therefore avoid access charges on what was actually non-local traffic.

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

This issue is different from the two issues discussed above, for it involves a simple failure to pay for facilities provided by AT&T under the ICA.

As noted earlier, Halo entered into a wireless ICA with AT&T, and wireless ICAs are somewhat different from landline ICAs. Tr. 42 (McPhee Direct at 12). One difference concerns cost responsibility for interconnection facilities. In a landline ICA, cost responsibility is typically determined by the point of interconnection ("POI"), in that the CLEC typically is responsible for the facilities on its side of the POI and the ILEC typically is responsible for the facilities on its side of the POI. *Id.* at 56. Wireless ICAs are different. In a wireless ICA, cost responsibility for interconnection facilities is typically shared between the carriers and typically apportioned based on the amount of traffic sent by each carrier. *Id.* The Halo-AT&T ICA is a typical wireless ICA in this regard. Section V.B of the ICA requires AT&T and Halo to pay each other for interconnection facilities based on the proportion of the total traffic that each party sends to the other, stating:

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

Hearing Ex. 1 (Ex. JSM-4). Section VI.B.2.b, in turn, states:

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

Id. The apportioning of facilities costs applies for the entire facility between AT&T's switch and Halo's switch. Tr. 56 (McPhee Direct at 26).

In order to interconnect with AT&T, Halo has ordered and obtained interconnection facilities from AT&T. Tr. 55 (McPhee Direct at 25). AT&T has billed Halo for those facilities, but Halo has disputed those charges and refused to pay them. Tr. at 54 (McPhee Direct at 24). As of the end of 2011, more than $172,000 in charges for these facilities remained disputed and unpaid. Tr. at 55 (McPhee Direct at 25). AT&T is entitled to be paid for what it provided.

Halo's main defense is its theory that cost responsibility for interconnection facilities ends at the POI. Tr. 365-74 (Wiseman Rebuttal at 58-67). That might make sense if Halo had a landline ICA, but it does not. The ICA here uses the typical wireless ICA terms, where cost responsibility for interconnection facilities is based on proportional usage. *See* Tr. 55-56 (McPhee Direct at 25-26). It is undisputed that 100% (or very close to 100%) of the traffic between the parties comes from Halo, meaning Halo is responsible for 100% of the costs for the interconnection facilities that is has ordered from AT&T, obtained from AT&T, and used to send traffic to AT&T. *Id.* at 56. AT&T merely asks the Commission to declare that, under the ICA, Halo must pay for those facilities. The amount due will be worked out in bankruptcy court.

Halo's other defense relies on footnote 1 to Section IV.B of the ICA, which states as follows:

> On some occasions Carrier may choose to purchases facilities from a third party. In all such cases carrier agrees to give BellSouth 45 (forty five) days notice prior to purchase of the facilities, in order to permit BellSouth the option of providing one-way trunking, if, in its sole discretion

> BellSouth believes one-way trunking to be a preferable option to third party provided facilities. Such notice shall be sent pursuant to Section XXIX. In no event shall BellSouth assess additional interconnection costs or per-port charges to Carrier or its third-party provider should Carrier purchase facilities from a third party, e.g. the same charges that BellSouth would charge Carrier should it provide the service.

Halo contends that this footnote means that if it obtains any interconnection facilities from a third party, it does not have to pay AT&T for any interconnection facilities, even the ones it admittedly obtains from AT&T. Tr. 391-92 (Wiseman Surrebuttal at 14-15). That contention does not make sense and is not consistent with a plain reading of footnote. Footnote 1 makes clear that if Halo obtains interconnection facilities from a third party, AT&T cannot continue to bill Halo for those same facilities. And AT&T has not billed Halo for any of the facilities Halo obtains from third parties. But footnote 1 cannot logically be read to mean that by obtaining interconnection facility A from a third party, Halo is somehow absolved for paying AT&T for interconnection facilities B, C, and D that it obtained from AT&T. Contracts should not be interpreted to reach such an absurd result.

IV. AT&T IS ENTITLED TO RELIEF FOR HALO'S BREACHES OF ITS ICA.

As remedies for Halo's breaches of the ICA, and to prevent further harm from continued breaches, AT&T asks the Commission to grant the following relief, all of which was granted by the TRA in the parallel case in Tennessee:

(a) Find that Halo has materially breached the ICA by: (1) sending landline-originated traffic to AT&T, (2) inserting incorrect CN information on calls; and (3) failing to pay for facilities it has ordered pursuant to the ICA.;

(b) Find that as a result of these breaches (or any of them), AT&T is excused from further performance under the ICA and may stop accepting traffic from Halo;

(c) Find, without quantifying any specific amount due, that Halo is liable to AT&T for access charges on the interstate and interLATA access traffic it has sent to AT&T;

(d) Find, without quantifying any specific amount due, that Halo is liable to AT&T for interconnection facilities charges that it has refused to pay to AT&T; and

(e) Grant all other relief as is just and appropriate.

A. The Commission Should Authorize AT&T to Discontinue Performance Under the ICA and Stop Accepting Traffic from Halo.

Both the ICA and South Carolina law permit AT&T to discontinue performance under the ICA and stop accepting traffic from Halo in light of Halo's material breaches of the ICA. In addition, no practical considerations mitigate against the termination of service.

It is black letter law that 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. *E.g.*, *Brazell v. Windsor*, 384 S.C. 512, 516-17 (S.C. 2009); *Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 105 (S.C. App. 1993); *Pickens County v. National Surety Co.*, 13 F.2d 758 (4th Cir. 1926) (under South Carolina law, material breach of the contract excused party from further performance.). 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*.

Granting the relief AT&T seeks will not adversely affect any South Carolina consumers. Given that Halo has only one alleged customer (Transcom) and that customer does not make any calls, no customer will lose dial tone when AT&T stops accepting Halo's traffic. In addition, the carriers that now send Halo traffic destined for AT&T either have alternative arrangements to get that traffic to AT&T or can make them very quickly. Halo has not claimed there were any problems with calls being completed in Tennessee after AT&T Tennessee discontinued service to Halo there, nor is AT&T aware of any problems.

In addition, granting the relief AT&T seeks will not run afoul of Halo's ongoing bankruptcy proceeding. AT&T asked for and received the identical relief from the Tennessee

Regulatory Authority (*see Tennessee Halo Order* at 22), 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 complaint. 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) (Att. A hereto). 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." *Id.*, ¶¶ 2-4. AT&T, of course, will comply with Section 365.

B. The Commission Should Declare That Halo Is Liable to AT&T for Access Charges on Non-Local Traffic Halo Delivered to AT&T.

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. Tr. 51 (McPhee Direct at 21). As demonstrated above, 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-local traffic. AT&T is *not* asking the Commission to determine how much Halo owes AT&T, or how many minutes of access traffic Halo has sent AT&T. Rather, AT&T only asks the Commission to rule that Halo owes AT&T access charges on such access

traffic as it has delivered. The court in Halo's bankruptcy case has made clear that this relief is permissible. That court has explained 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."[22] That is why AT&T asks only for a ruling that Halo owes access charges in an amount that remains to be determined, in all likelihood by the bankruptcy court.

In the recent Wisconsin proceedings, Halo 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 AT&T's tariffs. For example, Halo contends that it did not receive service from AT&T via a "Feature Group D" arrangement. Such arguments are a baseless smokescreen that exalts form over substance.

As shown above, Halo has sent landline-originated traffic to AT&T in breach of the ICA. As also shown above, a large portion of that landline traffic is non-local in nature, and AT&T terminated that traffic for Halo. Because the landline-originated traffic was not permitted by the ICA, there are no terms in the ICA defining the proper intercarrier compensation that Halo must pay to AT&T for terminating that traffic. It is obvious, however, that Halo must pay AT&T *something* more than mere reciprocal compensation on the *non-local* traffic it has been sending to AT&T South Carolina for termination. ILECs are not required to terminate non-local calls for free, or at the low reciprocal compensation rates that apply to local traffic. And as the Commission well knows, 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. Indeed, if Halo had been forthcoming up front, and acknowledged that it would be

---

[22] 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) (Att. B hereto).

sending non-local landline traffic to AT&T, the parties would have dealt with that in an ICA provision requiring Halo to pay tariffed switched access charges on that traffic or by simply having Halo sign up for service under the switched access tariff. The only reason that did not happen is Halo's insistence on erroneously claiming that all of its traffic was local, wireless traffic that originated with Transcom.

Not surprisingly, there is a legal doctrine that covers what Halo has done and that makes clear that Halo must pay AT&T access charges for the non-local traffic it delivered to AT&T for termination – the "constructive ordering" doctrine. Under that doctrine, 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. *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). The doctrine applies here.

First, there is no doubt that 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). ICA § VII.E (Hearing Ex. 1 (Ex. JSM-4)). Halo also knew it was sending traffic to AT&T that started outside the MTA or local calling area where Halo was located (Wiseman Rebuttal at 19) 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. *See 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).

Third, Halo "did in fact" receive terminating access service from AT&T. As shown throughout this brief and in the AT&T testimony, 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. 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* BellSouth Telecommunications FCC Tariff F.C.C. No. 1, § 6.1; *see also* BellSouth Telecommunications, Inc., South Carolina Access Services tariff, § E6.1. Those tariffed rates are the rates Halo must pay.

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 can and should hold that Halo is liable to AT&T for access charges on the long-distance landline traffic Halo has sent to AT&T. The actual amount Halo must pay will be determined in bankruptcy court.

Halo also contends that the FCC held in the *Connect America Order* that Halo's service is merely transit service. Based on this, Halo seems to argue that 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 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. *Connect America Order*, ¶¶ 1004-06. 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. *Id.* Rather, as non-local calls, those calls are subject to terminating access charges.

In addition, 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. *See* Hearing Ex. 1 (Exs. JSM-6 and JSM-7).

C. The Commission Should Declare That Halo Must Pay AT&T for the Interconnection Facilities AT&T Has Provided

There is no dispute that Halo ordered interconnection equipment from AT&T and used that equipment to send traffic to AT&T. The only question is whether Halo should have to pay for the use of that equipment. As shown above in part III, the ICA requires Halo to pay for such equipment based on proportional use, and Halo's proportional use is 100% (or exceedingly close to it). The Commission therefore should declare that Halo must pay the amount due for those facilities, as the TRA did. *Tennessee Halo Order* at 22. The specific amount that Halo must ultimately pay will be determined in bankruptcy court.

CONCLUSION

The Commission should find Halo in breach of its ICA with AT&T and has constructively ordered and obtained switched access service from AT&T, and grant AT&T all the relief requested in Part IV above.

Respectfully submitted,

Patrick Turner

By: _____

Patrick W. Turner
AT&T South Carolina
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
(803) 401-2900
pt1285@att.com

J. Tyson Covey
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312)782-0600
jcovey@mayerbrown.com

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Post-Hearing Brief in Docket No. 2011-304-C to be served upon the following on June 15, 2012:

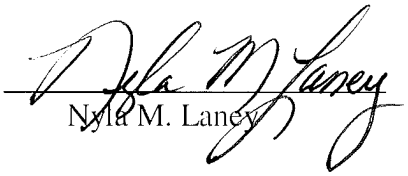
M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(South Carolina Telephone Coalition)
(Electronic Mail)

John J. Pringle, Jr.
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
Post Office Box 2285
Columbia, South Carolina 29202
(Halo Wireless, Incorporatd)
(Electronic Mail)

Troy P. Majoue
Steven H. Thomas
Jennifer M. Larson
McGuire, Craddock & Strother, P.C.
2501 N. Harwood
Suite 1800
Dallas, Texas 75201
(Halo Wireless, Incorporated)
(Electronic Mail)

W. Scott McCollough
McCollough Henry, P.C.
1250 S. Capital of Texas Hwy., Bldg. 2-235
Westlake, Texas 78746
(Halo Wireless, Incorporated)
(Electronic Mail)

Nanette Edwards, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
(Electronic Mail)



Nyla M. Laney

926588