

DIRECT TESTIMONY
OF
DR. JAMES ZOLNIEREK

TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY AND HALO WIRELESS, INC.
COMPLAINT AS TO VIOLATIONS OF AN INTERCONNECTION AGREEMENT
ENTERED INTO UNDER 47 U.S.C. §§ 251 AND 252 AND PURSUANT TO
SECTION 10-0108 OF THE PUBLIC UTILITIES ACT.

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2 **Q. Please state your name and business address.**

3 A. My name is James Zolnierrek and my business address is 527 East Capitol
4 Avenue, Springfield, Illinois 62701.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Illinois Commerce Commission (“Commission” or
8 “ICC”) as the Director of the Policy Division within the Public Utility
9 Bureau.

10

11 **Q. Please state your education background and previous job
12 responsibilities.**

13 A. I earned my Doctor of Philosophy degree in economics from Michigan
14 State University in 1996. Prior to joining the Illinois Commerce
15 Commission, I was employed by the Federal Communications
16 Commission (“FCC”) as an Industry Economist in the Common Carrier
17 Bureau, Industry Analysis Division.

18

19 **Overview**

20

21 **Q. What is the purpose of your testimony?**

22 A. Illinois Bell Telephone Company (“AT&T Illinois”) asserts in its complaint
23 against Halo Wireless, Inc. (“Halo”) that: (1) “[b]y sending landline-
24 originated traffic to AT&T Illinois, Halo is materially breaching the parties’

25 ICA [Interconnection Agreement]”¹; and (2) “all [landline-originated] traffic
26 sent to AT&T Illinois by Halo and terminated by AT&T Illinois to AT&T
27 Illinois’ end users is ... subject to tariffed switched access charges.”² In
28 my testimony, I will provide analysis of the issues in dispute and
29 recommendations to the Commission. Because I am not a lawyer, my
30 analysis of the ICA and a relevant FCC Order is based upon my own
31 layman’s reading of those documents. Staff counsel will address these
32 issues further, where appropriate, in briefs.

33

34 **Count I – Breach of ICA: Sending Wireline-Originated Traffic to AT&T**
35 **Illinois**

36

37 **Q. Do the parties have an ICA in Illinois that was approved by the**
38 **Commission?**

39 A. Yes. On August 18, 2010, in Docket No. 10-0374, the Commission
40 approved an ICA [“Initial ICA”] between the parties (i.e., approved Halo’s
41 adoption of the terms of an agreement between AT&T Illinois and T-
42 Mobile, USA, Inc.). On the same day, in Docket No. 10-0375, the
43 Commission approved an amendment [“Amendment”] to the ICA between
44 the parties. To my knowledge, the ICA and amendment adopted in these
45 two dockets comprise the entirety of the ICA between AT&T Illinois and
46 Halo in Illinois.

¹ Verified Complaint of Illinois Bell Telephone Company (“Complaint”) at paragraph 7.
² *Id.*, at paragraph 10.

47

48 **Q. Are there traffic types that Halo is not authorized, under the ICA, to**
49 **send to AT&T Illinois?**

50 A. Yes. The Initial ICA specifies:

51 The following traffic is not subject to this Agreement:

52 (a) Traffic which does not qualify as Local
53 Telecommunications Traffic, including, but not limited
54 to, interMTA traffic and interstate access "roaming"
55 traffic;

56 (b) Non-CMRS Traffic.³

57

58 The Initial ICA further specifies "Non-CMRS Traffic' means traffic which is
59 neither originated nor terminated on the wireless facilities of a CMRS
60 provider."⁴

61

62 Consistent with these provisions, the Amendment includes the following
63 language:

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

71

72 The parties agree that, with this language, the "parties' ICA authorizes
73 Halo to send only wireless-originated Commercial Mobile Service

³ Schedule JSM-4 attached to AT&T Illinois Exhibit 1.0 at Page 10 of 68.

⁴ *Id.*, at Page 7 of 68.

74 (“CMRS”) traffic to AT&T Illinois.”⁵

75

76 **Q. Is it your understanding that Halo is adhering to these ICA terms?**

77 A. No.

78

79 **Q. Why do you believe that Halo is not complying with the terms of the**
80 **ICA?**

81 A. First, Halo does not limit traffic that it sends to AT&T Illinois to CMRS
82 Traffic as required under the terms of the ICA. As Mr. Wiseman, testifying
83 on behalf of Halo, states:

84 Most of the calls probably did start on other networks before
85 they came to Transcom for processing. It would not surprise
86 me if some of them started on the PSTN.⁶
87

88 Similarly, he states:

89 Halo is not saying that some calls ultimately sent to AT&T for
90 termination did not, or could not have, started on the PSTN.
91 As I said above, we have acknowledged that this could
92 happen.⁷
93

94 **Q. Why do you believe traffic starting on the PSTN is not traffic that is**
95 **authorized by the ICA?**

96 A. The Initial ICA requires that:

97 The origination point and termination point on Ameritech’s
98 network shall be the end office serving the calling or called

⁵ *Id.*, at paragraph 6 and Verified Answer to Formal Complaint of Halo Wireless, Inc. (“Answer”) at paragraph 6.

⁶ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 32 (footnote omitted).

⁷ *Id.*, at page 36

99 party. The origination point or termination point on Carrier's
100 network shall be the cell site or base station which services
101 the calling or called party at the time the call begins.⁸
102

103 Consistent with this language, when a call starts on the PSTN, and the
104 called party is served by a Local Exchange Carrier, it is the end office
105 serving the calling party that constitutes the origination point of the call
106 and the call is therefore not originated on wireless facilities. Therefore,
107 when the calling party uses a Local Exchange Carrier to originate a call
108 that Halo ultimately sends to a called party served by AT&T Illinois' end
109 office, that call would neither originate nor terminate on the wireless
110 facilities of a CMRS provider and, therefore, would be Non-CMRS traffic
111 under the ICA.

112

113 **Q. Are there any other instances where Halo is failing to comply with**
114 **the ICA?**

115 A. Yes. Halo does not limit traffic that it sends to AT&T Illinois under the
116 terms of the ICA to intraMTA traffic.

117

118 **Q. Why do you assert that Halo does not limit traffic that it sends to**
119 **AT&T Illinois under the terms of the ICA to intraMTA traffic?**

120 Q. Halo has a single paying customer in Illinois, which is Transcom, and no
121 retail customers in Illinois.⁹ As Mr. Johnson, testifying on behalf of Halo,

⁸ Schedule JSM-4 attached to AT&T Illinois Exhibit 1.0 at Page 10 of 68.

⁹ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 10 and 17-18.

122 states: "Transcom does not deal with ultimate consumers and does not
123 provide any service to them. Transcom has no relationship with their
124 distant third parties at all."¹⁰ Therefore, as I understand it, Transcom is
125 not providing the end office, cell site, or base station which services the
126 calling party when the call begins. Therefore, the origination point for calls
127 that Halo sends to AT&T Illinois will be at the end office of a Local
128 Exchange Carrier serving the caller or at the cell site or base station of the
129 CMRS provider serving the caller. Halo, however, is operating as if
130 Transcom is the calling party, which is not the case.

131

132 **Q. In what way is Halo operating as if Transcom is the calling party?**

133 Q. As I understand the Halo witness's explanation, the Halo and Transcom
134 networks are configured so that each company has a presence within an
135 MTA and that Halo therefore considers traffic that Transcom sends to Halo
136 within an MTA and that Halo then sends to AT&T Illinois within that MTA
137 to be intraMTA traffic.¹¹ In this way Halo is treating Transcom as the
138 calling party and is acting as if Halo's cell sites and/or base stations are
139 servicing the calling party at the time the call begins. However, Transcom
140 is not the calling party for the call. As noted above, the calling party is
141 some distant third party which Transcom has no relationship with.

142

143 **Q. Has Halo identified where the calling parties at the origination point**

¹⁰ Pre-Filed Testimony of Robert Johnson on Behalf of Halo Wireless, Inc. at 8.
¹¹ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 10.

144 **of the traffic it sends AT&T Illinois are located?**

145 A. No. As noted above, the calling parties are identified as being served by
146 distant third parties. Mr. Wiseman further states that “[m]ost of the calls
147 probably did start on other networks before they came to Transcom for
148 processing” and that “Halo is not in a position to determine where or on
149 what network a call started, and we have not asked our customer.”¹²
150 Based on this evidence, it is very likely that some of these calls are
151 initiated outside the MTA.

152

153 **Q. Is there any further evidence that Transcom passes traffic initiated**
154 **by a calling party through a landline provider other than Transcom to**
155 **Halo for termination by AT&T Illinois?**

156 A. Yes. Mr. Neinast provided evidence of several instances in which the
157 calling party’s number is a number associated in the Local Exchange
158 Routing Guide with a landline carrier.¹³

159

160 **Q. Do you agree with Halo that “using the calling party number to**
161 **identify the ‘originating network’ ... is not a reliable way to determine**
162 **the starting location of a call, or the carrier network that the call**
163 **started on”?**¹⁴

164 A. I agree that calling party numbers do not, in every instance, identify the

¹² *Id.*, at 32.

¹³ Schedule MN-5 attached to AT&T Illinois Ex. 2.0.

¹⁴ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 10.

165 starting location of a call or the carrier network that the call started on. In
166 many instances, however, calling party numbers do identify the starting
167 location of a call or the carrier network that the call started on. Thus, I do
168 believe that such evidence coupled with the fact that Halo purposefully
169 does not take steps to limit traffic that it sends to AT&T Illinois under the
170 terms of the ICA to either CMRS or intraMTA traffic, requires Halo to
171 identify and ensure that the calls that its delivers to AT&T Illinois are not
172 Non-CRMS and are not interMTA.

173

174 **Q. Will you summarize your recommendation with respect to this issue?**

175 A. If Halo is unable to provide evidence that the traffic it receives from
176 Transcom and passes to AT&T Illinois does not come from calls initiated
177 by a calling party at the end-offices of local exchange carriers, or that such
178 traffic does not come from a call initiated by a calling party on cell sites
179 and/or base stations of CMRS providers outside of the MTA to which the
180 traffic is delivered, then the Commission should find Halo to be in breach
181 of ICA as alleged by AT&T Illinois.

182

183 **Count II – Obligation to Pay Access Charges for Termination of Wireline-**

184 **Originated Traffic**

185

186 **Q. Does the parties ICA govern rates, terms, and conditions for access**
187 **traffic?**

188 A. No. The Initial ICA states “Traffic which is not subject to Reciprocal
189 Compensation under this agreement shall continue to be charged at the
190 access rates set forth in the applicable tariff or contract.”¹⁵

191

192 **Q. Should the Commission make any determination with respect to**
193 **whether Halo should be required to pay any interstate access**
194 **charges?**

195 A. No. The Commission should make no finding with respect to interstate
196 access charges. AT&T Illinois’ interstate access charges are regulated by
197 the Federal Communications Commission (“FCC”) and any dispute as to
198 whether Halo has or should have paid such charges is within the purview
199 of the FCC and not the Commission.

200

201 **Q. Should the Commission make any determination with respect to the**
202 **whether Halo should be required to pay any intrastate access**
203 **charges?**

204 A. Yes. Unlike interstate access charges, which are jurisdictionally regulated
205 by the FCC, intrastate access charges are regulated in Illinois by the
206 Commission.

207

208 **Q. Do you recommend that the Commission determine that Halo is**
209 **responsible for access charges?**

210 A. Yes. Mr. Neinast reports that during the period between 9/11/11 and

¹⁵ Schedule JSM-4 attached to AT&T Illinois Exhibit 1.0 at Page 10 of 68.

211 9/17/11, based upon LERG information, 8% of the traffic Halo sent to
212 AT&T Illinois was originated by calling parties through landline providers in
213 Illinois exchanges other than where the traffic was terminated.¹⁶ As
214 above, I believe that such evidence, coupled with the fact that Halo does
215 not take steps to limit traffic that it sends to AT&T Illinois under the terms
216 of the ICA to either CMRS or intraMTA traffic, requires Halo to identify and
217 ensure that the calls that its delivers to AT&T Illinois are not interexchange
218 calls that have an originating point at the end office of an Illinois Local
219 Exchange Carrier.

220

221 **Q. Is the recommendation you make consistent with your layman's**
222 **knowledge of the FCC's determination concerning Halo in its recent**
223 **intercarrier compensation order?**¹⁷

224 A. Yes. In its Connect America Fund Order, the FCC states that

225 Because the changes we adopt in this Order maintain,
226 during the transition, distinctions in the compensation
227 available under the reciprocal compensation regime and
228 compensation owed under the access regime, parties must
229 continue to rely on the intraMTA rule to define the scope of
230 LEC-CMRS traffic that falls under the reciprocal
231 compensation regime."¹⁸

232

233 The FCC further states:

¹⁶ Schedule MN-4 attached to AT&T Illinois Exhibit 2.0.

¹⁷ Federal Communications Commission, In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, FCC 11-161, released November 18, 2011 ("Connect America Fund Order").

¹⁸ *Id.*, at paragraph 1004.

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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.¹⁹

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Consistent with these FCC findings, and the terms of the ICA between the parties, the Commission should find that when Halo receives traffic from Transcom that comes from calls initiated by a calling party served by end-offices of local exchange carriers located in different exchanges in Illinois and then passes that traffic to AT&T Illinois for termination in exchanges in Illinois, this process does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation. Consistent with this, the Commission should find that such traffic is subject to the access regime rather than the reciprocal compensation regime.

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Q. Is it your opinion that Halo is inserting itself into the call path between telecommunications carriers serving calling parties and telecommunications carriers serving called parties for the purposes of regulatory arbitrage?

262

A. Yes. Halo asserts that it has “interpreted and applied telecommunications

¹⁹ *Id.*, at paragraph 1006.

263 laws and rules in a novel, but legal way, in order to bring real tangible
264 value to Illinois consumers.”²⁰ In my opinion Halo is actually operating in
265 breach of its contract and failing to pay access charges. While this
266 strategy may benefit Halo and/or its customers, it is at the expense of
267 companies and customers that Halo sends traffic to.

268

269 **Q. Will you summarize your recommendation with respect to this issue?**

270 A. If Halo is unable to provide evidence that the traffic it receives from
271 Transcom and passes to AT&T Illinois for termination in exchanges in
272 Illinois does not come from calls initiated by a calling party served by end-
273 offices of local exchange carriers located in different exchanges in Illinois,
274 then Commission should find Halo owes AT&T Illinois’ intrastate switched
275 access charges.

276

277 **Q. Does this conclude your direct testimony?**

278 A. Yes.

²⁰ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 3.