

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois Bell Telephone Company, Inc.	)	
	)	
-vs-	)	
	)	
Halo Wireless, Inc.,	)	
	)	Docket No. 12-0182
Complaint as to violations of an interconnection	)	
agreement entered into under 47 USC §251	)	
and 252 and pursuant to Section 10-0108 of the	)	
Public Utilities Act.	)	

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**REPLY BRIEF OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant proceeding.

This Reply Brief will respond to certain positions or arguments made in the respective Initial Briefs (IBs) of Illinois Bell Telephone Company Inc. (AT&T Illinois) and Halo Wireless Inc. (Halo). Initial Briefs were filed on July 13, 2012.

**Staff Reply to Halo**

Halo did not address Staff in its IB. Staff’s reply to Halo will necessarily be short. Staff does want to point out that the ALJ has already specifically rejected certain arguments made by Halo in its Partial Motion to Dismiss the Complaint, filed April 30, 2012. In a Notice of Administrative Law Judge’s Ruling, issued May 16, 2012, the ALJ

“denied” the Halo Partial Motion to Dismiss. Halo, however, attempts to revive these arguments in its IB, despite acknowledging the fact that the ALJ has already decided these issues against Halo. Halo IB, at 9-11 (“Although the Commission has denied Halo’s Motion to Dismiss on these grounds[.]”). Halo argues that the doctrines of *res judicata* and collateral estoppels should be applied “to preclude the relitigation of the ESP and end user issues in this case.” *Id.*, at 9. Halos’ attempt at reviving these arguments must fail under the “law of the case” doctrine.

The "law of the case" doctrine provides that “once a court renders a decision in a case, later decisions in that same case are closed to reconsideration, except by a court of review.” See *e.g.*, *Order, South Austin Community Coalition Council v. Commonwealth Edison Company*, ICC Docket No. 02-0706 (Jan. 11, 2005), at 8. Halo did not seek interlocutory review of the ALJ’s May 16, 2012 ruling. The law of the case doctrine “is not a limitation on a tribunal’s powers, rather, it is an expression of the practice by tribunals to refuse to re-litigate that which has already been decided in a case.” *Id.* Moreover, the law of the case doctrine encompasses both “explicit decisions and issues decided by necessary implication.” *Reich v. Gendreau*, 308 Ill. App. 3d 825, 829 (2d Dist. 1999) (finding that trial court’s unchallenged ruling became law of the case). The ALJ has already rejected Halo’s arguments that the doctrines of *res judicata* and collateral estoppels should be applied “to preclude the relitigation of the ESP and end user issues in this case” in its Ruling of May 16, 2012. Halo did not take an interlocutory appeal of that ruling. Consequently, the ALJ’s May 16, 2012 ruling is the law of this case and the ALJ should summarily disregard the Halo *res judicata* and collateral estoppel arguments.

## Staff Reply to AT&T Illinois

As a general matter, Staff accepts and even supports the AT&T Illinois positions across the board. See Staff IB, *generally*. However, AT&T Illinois “asks the Commission to rule that Halo owes AT&T access charges on such access traffic as it has delivered.” AT&T IB, at 34. As Staff has noted before, there are two types of access traffic. *Intrastate* access charges are regulated in Illinois by the Commission, unlike *interstate* access charges, which are jurisdictionally regulated by the FCC. Staff Ex. 1.0, at 11. Staff, accordingly, recommends that the Commission find that Halo owes AT&T access charges on intrastate access traffic and refrain from addressing the federal interstate access traffic. See Staff IB, at 22 (“Staff . . . recommends that the Commission find that Halo owes an undetermined amount of money for access charges on the intrastate non-local traffic Halo sent to AT&T Illinois for termination.”). Staff acknowledges, however, that it would reach the very same conclusion on *interstate* access charges as it has on *intrastate* access charges if it thought those charges were regulated by the Commission.

## **Conclusion**

For the reasons set forth above, Staff respectfully requests that the Commission adopt Staff's recommendations in this proceeding.

MICHAEL J. LANNON  
KELLY A. ARMSTRONG

Counsel for the Staff of the Illinois  
Commerce Commission

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KELLY A. ARMSTRONG  
MICHAEL J. LANNON  
Office of General Counsel  
Illinois Commerce Commission  
160 N. LaSalle, Ste. C-800  
Chicago, IL 60601  
Phone: (312) 793-3305  
(312) 814-4368  
Fax: (312) 793-1556  
E-mail: [karmstrong@icc.illinois.gov](mailto:karmstrong@icc.illinois.gov)  
[mlannon@icc.illinois.gov](mailto:mlannon@icc.illinois.gov)