



Control Number: 39417



Item Number: 1

Addendum StartPage: 0

DOCKET NO. 39417

PETITION OF NORTEX §  
COMMUNICATIONS FOR MEDIATION §  
AND COMPULSORY ARBITRATION §  
WITH HALO WIRELESS, INC. UNDER §  
THE FEDERAL TELECOMMUNICATIONS §  
ACT RELATING TO INTERCONNECTION §  
RATES, TERMS AND CONDITIONS §

BEFORE THE  
  
PUBLIC UTILITY COMMISSION  
  
OF TEXAS

FILED  
JAN 19 PM 2:03  
CLERK

**PETITION FOR MEDIATION AND COMPULSORY ARBITRATION**

TO THE HONORABLE COMMISSION:

Nortex Communications ("Nortex") petitions the Public Utility Commission of Texas ("PUC") pursuant to the rules of the PUC and Sections 332 and 252 of the Federal Telecommunications Act of 1996, for mediation and compulsory arbitration for any unresolved issues of a traffic exchange agreement with Halo Wireless, Inc. ("Halo"), a WiMax provider of fixed mobile radio service within the State of Texas. Nortex seeks mediation under the PUC's rule §26.272(f) (6) which states that any party to the negotiations may request a Commission designee to participate in the negotiations and to mediate any differences arising in the course of negotiations. Nortex seeks mediation of the issues outlined below. Nortex also requests compulsory arbitration of any outstanding unresolved issues resulting from mediation under PUC rule §26.272(g) compulsory arbitration process.

**I. OVERVIEW**

Nortex is a wireline incumbent local exchange company (ILEC) providing local and exchange access service within the State of Texas. On December 14, 2010, Nortex presented to Halo a bonafide request for negotiations of an indirect traffic exchange agreement in accordance with section 332 of the Telecommunications Act of 1996 and Section 47 C.F.R. §20.11(e) for the compensation of wireless traffic terminated by Nortex. On December 22, 2010, Halo responded

to Nortex's December 14<sup>th</sup> request, citing a number of reasons that Nortex's request was "defective," all of which were without merit; for example, Halo claimed that Nortex did not properly request interconnection and did not properly invoke 47 C.F.R. § 20.11(e).

FCC rules and orders clearly permit interim compensation for traffic termination pending the negotiation of an agreement; Halo has disputed Nortex's invoices seeking interim compensation. In its *T-Mobile Order*, the FCC ordered wireless carriers to negotiate with incumbent LECs for terms, conditions and compensation for termination of wireless traffic. Further, the FCC adopted rules obligating wireless carriers to negotiate such agreements, and providing for arbitration of interconnection agreements, together with interim compensation pending negotiation and arbitration.<sup>1</sup> This Petition seeks mediation for the establishment of issues related to an indirect traffic exchange agreement for the termination of wireless traffic between Nortex and Halo, mediation of interim rates in accordance with FCC rules and, in the alternative, arbitration of any unresolved issues. This petition for compulsory arbitration is timely filed as the window for filing arbitration is April 28, 2011 through May 23, 2011 (160<sup>th</sup> day).

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<sup>1</sup> *Developing a Unified Inter-carrier Compensation Regime/T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 70 FCC Rcd 4855 (Feb. 24, 2005). ("*T-Mobile Order*") See also 47 C.F.R. §20.11(e), stating that an incumbent local exchange carrier may request interconnection from a commercial radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act, and that "A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 shall apply."

## **II. NORTEX'S EFFORTS TO NEGOTIATE AND RESOLVE THE ISSUES**

1. Nortex submitted a request for negotiations to Halo on December 14, 2010.<sup>2</sup>
2. Nortex received a written response from Halo to Nortex's December 14, 2010 request for negotiations on December 22, 2010.<sup>3</sup>
3. The parties participated in a conference call on February 2, 2011 to attempt resolution of Halo's reasons for not moving forward with negotiations of an agreement. Among the points of discussion, Halo asserted on the call that Nortex 1) had not properly requested negotiations; 2) had not properly invoked §20.11(e); 3) that the negotiation "clock" did not start until Nortex properly requested negotiations; and, 4) that Nortex's interim proxy transport and termination rate does not comply with FCC rule §51.715 because that rule does not allow transport and termination rates that use "NECA rates" which Halo takes to mean interstate exchange access rates that are not TELRIC-based.
4. On April 8, 2011,<sup>4</sup> Nortex sent a letter to Halo requesting that the parties move forward to negotiate an indirect traffic exchange agreement for termination of the current indirect traffic, so as not to continue holding up lawful interim reciprocal compensation payments; then, Nortex would move forward with negotiating direct connections with Halo if required. Nortex submitted a draft Traffic Exchange Agreement to Halo as an attachment to its April 8, 2011 letter to Halo. Further, in this letter, Nortex counter-proposed a reciprocal compensation rate of \$.0075. Although Nortex believes its initial December 14, 2010 letter to Halo was clear, Nortex

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<sup>2</sup> Attachment A – see copy of Nortex's December 14, 2010 request letter to Halo.

<sup>3</sup> Attachment B – see copy of Halo's December 22, 2010 letter.

<sup>4</sup> Attachment C – see copy of Nortex's April 8, 2011 letter to Halo.

affirmed that any negotiated agreement with Nortex falls under §252. In addition, Nortex submitted its understanding that §252 agreements must be filed with the PUC.

5. On April 12, 2011,<sup>5</sup> Halo responded via written letter, reiterating that Nortex “did not properly invoke 47 C.F.R. §20.11(e)” and that “. . . an ILEC seeking to invoke the rights and remedies under the rule must do two things before any obligations attach to the CMRS provider. First the ILEC must request interconnection. Second, the ILEC must expressly invoke the negotiation and arbitration procedures in section 252. None of your correspondence to date meets either of these separate requirements.” Halo’s letter also states that if Nortex’s position is that “we are operating in the §252 context,” we have the duty to produce cost studies using TELRIC principles that support Nortex’s proposed compensation pricing. Halo also asserts in its letter that they would like direct interconnection with Nortex and will not agree to an interim rate or a date to begin interim billing until all issues are resolved, even though Halo is not “negotiating” in accordance with §252 provisions.

6. Nortex submits that Halo has stalled negotiations and has not negotiated in good faith by denying the legitimacy of Nortex’s requests for a wireline/wireless traffic exchange agreement, by denying a “clock” has started and applicability of C.F.R. §20.11(e). In its *T-Mobile Order*, the FCC ordered wireless carriers to negotiate with ILECs for terms of compensation for termination of wireless traffic, and adopted rules obligating wireless carriers to negotiate such agreements.<sup>6</sup> Because Halo’s conduct violates clearly defined orders and rules, Nortex submits that Halo has not negotiated in good faith.

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<sup>5</sup> Attachment D - see attachment of Halo’s April 12, 2011 letter.

<sup>6</sup> *Id.*

### III. ISSUES PRESENTED FOR MEDIATION AND ARBITRATION

#### Issue 1: Section 252 Negotiation Start Date

Nortex sent its initial request for negotiations on December 14, 2010 and therein states in the first paragraph that Nortex is “requesting negotiations for a wireless interconnection agreement with Halo Wireless, Inc. in accordance with Section 332 of the Telecommunications Act of 1996 and Section 47 CFR §20.11(e) and invoking negotiation and arbitration procedures contained in Section 252 of the Act.” Halo states in its April 12, 2011 letter that Nortex did not “properly invoke 47 CFR §20.11(e)” by “requesting interconnection” and invoking “the negotiation and arbitration procedures in section 252.” Nortex’s request clearly outlines the criteria Halo references; however, Halo continues to ignore the negotiation start date of December 14, 2010. Rather Halo chooses to “discuss all potential avenues for a voluntary arrangement outside the context of §252” and to this date has not agreed to a negotiation start date. Nortex submits that Halo is not negotiating in good faith and is using this meaningless argument as a delay tactic.

Nortex notes that Halo’s legal counsel has a similar dispute in an AT&T proceeding in Docket No. 26381<sup>7</sup> where this attorney projects that AT&T’s “reasons are fairly transparent: they want to be able to argue that UTEX never sent a valid ‘request’ and the clock will never start.” Nortex believes Halo’s legal counsel is attempting the same “fairly transparent” reason for making these illogical arguments with Nortex. Nortex requests the Staff mediator to establish a negotiation start date as of December 14, 2010.

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<sup>7</sup> *Petition of UTEX Communications Corporation for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1976, and PURA for Rates, Terms, and Conditions of Interconnection Agreement with Southwestern Bell Telephone Company*; UTEX Communications Corp., Letter to Arbitrators RE: Comments on AT&T Texas’ Filing, March 29, 2011, page 3.

## **Issue 2: Interim Compensation and Calculation of an Interim Rate**

Nortex has sent Halo interim transport and termination invoices dated January 7, 2011; February 1, 2011; March 1, 2011; and, May 4, 2011 (April billing was combined with the May invoice). Nortex's interim proxy transport and termination rates have been properly calculated, pursuant to § 51.715 of the FCC's rules.<sup>8</sup> As of the date of this Petition, Halo has not disputed any of the invoices, but all invoices remain unpaid. Nortex seeks mediation on the following issues surrounding interim rates:

### **a. Date Interim Rates Can Be Implemented**

Nortex believes it has the right to submit invoices based on an interim rate beginning as of the date of its initial request for negotiations. Nortex's initial request for negotiations was December 14, 2010. While Halo affirms in its filed FCC Reply Comments on April 18, 2011<sup>9</sup> that "An ILEC can even obtain 'interim' pricing pending final resolution if it is willing to implement 47 C.F.R. § 51.715," Halo now denies that interim rates apply until all issues have been resolved. According to FCC §20.11(e), "once a request for interconnection is made, the interim transport and termination pricing described in 51.715 of this chapter shall apply." It is clear that interim billing can begin the day the request for interconnection is made. Nortex requests the Staff assigned mediate this issue.

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<sup>8</sup> Attachment E - see copy of FCC Rule 47 CFR§ 51.715.

<sup>9</sup> *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Reply Comments of Halo Wireless, Inc., April 18, 2011, pg. 3.

**b. Calculation of Interim Rates**

Nortex believes that it has followed the prescribed process for calculating interim rates in accordance with FCC §51.715. Please see Attachment F which outlines the calculation of Nortex's interim rate. Halo asserts that interim rates need to be supported by TELRIC studies. Nortex does not agree and notes that FCC §51.715(b)(3) states the following: "In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in §51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.015 cents per minute of use), and transport (as described in §51.707(b)(2)).<sup>10</sup> Nortex requests the Staff mediator to mediate as to whether the Nortex rates have been calculated as prescribed by the FCC §51.715.

**Issue 3: Proof of Traffic**

Nortex requests that Halo be required to show evidence that the terminating traffic was originated by Halo wireless customers. Nortex first started terminated Halo's traffic on August 9, 2010. As of the date that Nortex submitted its initial request for negotiations, Halo has sent for termination an average of 78,400 monthly minutes of use. This level of usage is fairly significant given that Halo only provides WiMax services in three small areas of Texas. Halo has three registered towers in Texas – one in Tyler; one in Brenham; and, one in Pleasanton. Given that the terminating traffic to the Nortex end office from Brenham or Pleasanton would be considered exchange access where access charges would apply, it seems illogical that Halo's customers in Tyler (total population of 101,106 according to a 2005 demographics study) would

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<sup>10</sup> Attachment G - see copy of §51.707(b)(2) and §51.715.

generate that level of usage to less than 3,000 customers. Given these facts, Nortex has reason to believe that the traffic terminated by Halo on Nortex was not originated by Halo wireless customers and that Halo may be serving as a least cost router for the purpose of terminating traffic for interexchange carriers or CLECs.

In fact, when Nortex dials the originating NPA-NNX that populates the originating call record (i.e. the calling telephone number or Calling Party Number) provided to Nortex for billing purposes, Nortex reaches a recorded announcement. The same calling telephone number shows on all billing records. Nortex believes the original calling telephone number was replaced with a fake number to serve Halo's purpose of creating a false originating number for billing. Nortex believes that the majority, if not all, of the traffic is interexchange access traffic and that Halo is attempting to disguise the traffic as intraMTA wireless traffic in order to obtain a lower compensation rate. Nortex requests that the Staff mediator require Halo to show proof of traffic and provide the parties direction as to the application of interstate and intrastate access rates and local rates as they apply to wireless carriers.

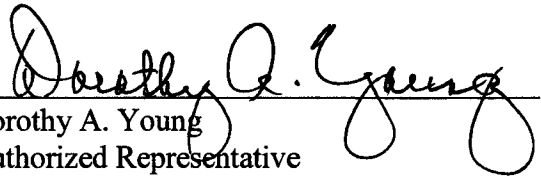
#### **Issue 4: Permanent Rates**

In accordance with PUC §26.272(d)(4)(B)(ii), an ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. Nortex believes this rule allows the company to adopt the interconnection rates of another carrier although Nortex has offered a rate lower than some larger carriers. Halo believes that Nortex should provide TELRIC studies for all rates, including interim rates. Nortex requests the Staff mediator provide the parties assistance regarding Halo's request to provide TELRIC studies.

### **III. ISSUES PRESENTED FOR ARBITRATION AND RELIEF REQUESTED**

For the initial phase of this process, Nortex contends that the disputes between the parties center on the above threshold issues and that these issues must be mediated in order for the parties to move forward with the negotiations for any other potential issues. Nortex prefers to negotiate a traffic exchange agreement with Halo for the exchange of eligible terminating traffic. Alternatively, if mediation does not resolve the issues outlined above, Nortex requests that any open issues be presented for arbitration, and Nortex reserves its right to include other unresolved issues as negotiations proceed.

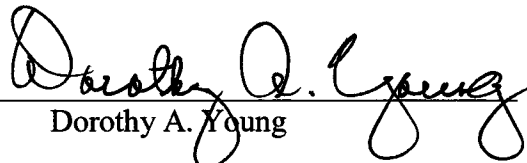
Respectfully submitted,

  
Dorothy A. Young  
Authorized Representative  
Nortex Communications

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following parties by electronic mail, facsimile, or U.S. Mail on this the 19th day of May, 2011.

Mr. John Marks  
Halo Wireless  
2351 West Northwest Highway  
Suite 1204  
Dallas, TX 75220

  
Dorothy A. Young

## **ATTACHMENT A**



December 14, 2010

Mr. Todd Wallace  
Halo Wireless, Inc.  
3437 W. 7th Street, Box 127  
Fort Worth, Texas 76107

AND VIA EMAIL: [jmarks@halowireless.com](mailto:jmarks@halowireless.com)

Dear Mr. Wallace:

On behalf of our client, Nortex Communications ("NORTEX") (OCN 2116), we are requesting negotiations for a wireless interconnection agreement with Halo Wireless, Inc. ("HALO") (OCN 429F) in accordance with Section 332 of the Telecommunications Act of 1996 and Section 47 CFR § 20.11(e) and invoking the negotiation and arbitration procedures contained in Section 252 of the Act.

The following are my calculations of the dates of the negotiation and arbitration windows; if your calculations differ, please let me know.

Day 1	12/15/2010	135-day window starts
Day 136	04/28/2011	Arbitration window begins
Day 160	05/23/2011	Arbitration window ends

If you have any questions, I may be reached at 512-343-2544 (main #) or 512-652-7726 (direct) or [dorothy.young@chrsolutions.com](mailto:dorothy.young@chrsolutions.com).

I look forward to working with you,

Dorothy A. Young  
Authorized Representative, NORTEX Communications

DAY/pjf

cc: Mr. Alan Rohmer, NORTEX Communications

Austin • Camden • Columbia • Dallas • Houston • Lubbock  
Missoula • Mitchell • Mobile • Nashville • Sioux Falls • Springfield  
5929 Balcones Drive • Suite 200 • Austin, TX 78731-4280

## **ATTACHMENT B**

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December 22, 2010

Dorothy A. Young  
CHR Solutions  
5929 Balcones Drive, Suite 200  
Austin, TX 78731-4280

RE: NORTEX Communications/Halo Wireless, Inc.

Dear Ms. Young:

I am counsel to Halo Wireless. On or about December 14, 2010 you sent a letter to Halo indicating that NORTEX Communications (NORTEX) is "requesting negotiations for a wireless interconnection agreement with Halo ... in accordance with Section 332 of the Telecommunications Act of 1996 and Section 47 C.F.R § 20.11(e) and invoking the negotiation and arbitration procedures contained in Section 252 of the Act." I will advise you of the defective aspects of the attempt so that you can cure the problems that exist and properly start the process if you wish. I will also respond to the additionally defective attempt to invoke the interim transport and termination pricing described in 47 C.F.R. § 51.715. If and when you cure these errors and omissions we will institute negotiations with NORTEX within a correctly established window under § 252 of the Act. If you choose to not correct the defects we are still willing to negotiate with NORTEX for a § 251(a) agreement.

First, your reference to "Section 332 of the Telecommunications Act of 1996" is somewhat confusing. The bill that passed through Congress and was signed by the President is the "Telecommunications Act of 1996" and is properly cited as "Pubic Law No. 104-104, 110 Stat. 56 (1996)." The "Telecommunications Act of 1996" did not have a "Section 332." The Telecommunications Act of 1996 created several new sections of the Communications Act, and amended some pre-existing sections. One of the amended sections was § 332, which already existed. Some of the new sections also mention § 332. But most of what is now codified in 47 U.S.C § 332 predated the Act, and § 332(c) – which is what I presume you were trying to invoke – already existed. Section 332 is part of the Communications Act, but your citation to § 332 of the "Telecommunications Act of 1996" is inaccurate and confusing. I hope that henceforth you will use correct citations and form so there is no more confusion going forward.

We have done some research and NORTEX appears to be an incumbent LEC. Your letter did not state that NORTEX is a CMRS provider and we presume it is not. Turning to Communications Act § 332(c), the statute itself does not give an incumbent LEC the right to demand negotiations with a CMRS provider for a "wireless interconnection agreement." The closest thing is § 332(c)(1)(B) and the plain words of that provision require that the request come from a "person providing commercial mobile service." As far as we can determine, NORTEX is not entitled to demand negotiations or an agreement under § 332.

Your letter does also mention 47 C.F.R. § 20.11(e), which provides:

An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and

arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 of this chapter shall apply.

This FCC rule does give ILECs the right to make requests of CMRS providers. But any rights NORTEX may have must derive solely from, and be consistent with, the rule. A comparison of your “request” to the rule itself results in several deficiencies.

You request “negotiations,” but you do not “request interconnection” nor do you request “services, or network elements pursuant to section 251.” Under rule 20.11 (and again in § 252, which the rule mentions) a carrier must submit a “request for interconnection,” and then – or at the same time – seek negotiations in order to affect interconnection through an agreement. The letter is therefore defective, since it does not “request interconnection.” Once you do “request interconnection” then you may also “invoke the negotiation and arbitration procedures contained in section 252 of the Act” and Halo will negotiate in good faith pursuant to the procedures in Section 252. While we are happy to negotiate with NORTEX under § 251(a), you have not followed the requirements of the rule and thus you have not properly invoked “the negotiation and arbitration procedures contained in Section 252.” As a consequence no arbitration window has been established, and it will not be established unless and until you provide a compliant notice and request that fully invokes rule 20.11 and then § 252 and all of its procedures and substantive requirements.

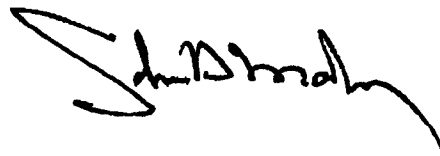
I am not merely insisting that you utter some meaningless incantation. In order for the “negotiation and arbitration procedures in Section 252” to apply, there must be a “request for interconnection, services, or network elements pursuant to section 251.” See § 252(a)(1). When a “request for interconnection, services, or network elements pursuant to section 251” is made, the parties can decide whether they wish to “negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251.” Should no voluntary agreement be reached, then one or the other parties may seek state level arbitration under § 252(b) – (d). But those things only flow after there is a “request for interconnection, services, or network elements pursuant to section 251.” With all due respect, you have not made such a request and neither has Halo. To be even more specific, your letter does not come close to invoking any duty addressed in § 251(c). Until you do so there is no duty to negotiate in good faith for anything related to § 251 or § 252, since § 251(c)(1) and FCC rule 51.301 only apply in the context of § 251(c). If and when NORTEX is ready to be bound by § 251(c) and the companion standards in § 252(c) and (d) as part of any request to Halo we will acknowledge a proper invocation of rule 20.11.

I further note that NORTEX did not state whether it requests Halo to “submit to arbitration by the state commission.” The FCC rule requires CMRS providers to submit to state-level arbitration if an ILEC requests, but the ILEC is required to make the request, and you have not. If and when NORTEX properly invokes § 252 (including an acknowledgement that NORTEX is bound by § 251(c) and § 252(c) and (d), and if and when NORTEX separately and specifically requests that Halo submit to state level arbitration, Halo will comply with the rule.

You may contact me if you have any questions.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marks", with a stylized, sweeping flourish extending from the end.

John Marks  
General Counsel  
[jmarks@halowireless.com](mailto:jmarks@halowireless.com)

## **ATTACHMENT C**



April 8, 2011

**VIA ELECTRONIC MAIL (EMAIL)**

Mr. John Marks  
Halo Wireless  
3437 W. 7<sup>th</sup> Street  
Suite 127  
Fort Worth, Texas 76107

RE: Nortex Communications (Nortex)

Dear Mr. Marks:

Nortex desires to move forward with negotiation of the attached proposed wireless agreement for exchange of indirect traffic. We do not believe it is appropriate to hold up this agreement for the time it may take to negotiate direct connections. Our proposed agreement allows for direct connection arrangements in Section 3.0 under certain conditions, thereby giving Halo the right to immediately request a direct connection. Nortex is interested in concluding the attached agreement and then entering into discussion on direct connections, given the technical aspects of such arrangements.

The reciprocal compensation rate we offer in further compromise is \$0.0075 per MOU. We believe our date of December 1 is an agreeable date to begin interim billing, even though we believe the interim billing date allowed by FCC's rule can start the day Nortex's original letter requested negotiations on December 14, 2010. We will instruct our client to begin interim billing as of December 14, 2010 at the \$.0075 rate. We do agree that this rate is a reciprocal rate.

Our client has been terminating a tremendous amount of usage since Halo introduced its wireless traffic into the network for which our client should be appropriately compensated. The FCC's Rule 20.11(e) allows for interim billing subject to true-up. The purpose of the interim billing rule is to accommodate a situation of this nature where the Local Exchange Companies (LECs) are terminating large amounts of usage and the parties are still in discussions regarding contract language.

• Camden • Columbia • Dallas • Houston • Lubbock  
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Mr. John Marks  
April 8, 2011  
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We believe that any agreement to exchange traffic or directly connect with a regulated LEC is required to be filed with the PUC. Regardless of which entity provides transport to Halo, Halo will need connections to the LEC's regulated network to exchange traffic with local customers and that arrangement must be captured in an agreement and filed with the PUC. We do agree that perhaps more than one agreement may be needed if Halo decides to use a third-party for transport services.

We would like to discuss this further next week. Please provide us with some dates and times that suit your schedule.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorothy A. Young".

Dorothy A. Young  
Authorized Representative for  
Nortex Communications

DAY/pjf

Attachment

cc: Mr. Alan Rohmer, Nortex Communications

## **ATTACHMENT D**



April 12, 2011

Dorothy A. Young  
"Authorized Representative"

CHR Solutions, Inc.  
5929 Balcones Drive, Suite 200  
Austin, TX 78731-4280

Via email: [Dorothy.Young@chrsolutions.com](mailto:Dorothy.Young@chrsolutions.com)  
Via FAX: 512.343.0119

RE: Livingston Telephone Company, NORTEX Communications, North Texas Telephone,  
Totalcom Communications, LLC.

Dear Ms. Young:

Thank you for your April 8, 2011 letters regarding the above-named companies. We have reviewed those letters, as well as the draft ICAs you sent as well. I will address both below.

I am confused and disappointed by your letters. As you will recall, the parties exchanged correspondence in late December, 2010 and January, 2011. We also had a long phone conference call. As a result of those discussions, Halo sent you the outlines of an offer on February 7, 2011. This letter laid out status and how we proposed to proceed. Two months passed with no response from you. Indeed, your April 8 correspondence does not acknowledge that set of proposals, although it tangentially touches on some of the topics.<sup>1</sup> Perhaps you and your clients simply forgot. Therefore I will restate the basics.

The initial letters you sent Halo in December, 2010 merely "request negotiations for an agreement." Halo advised you soon thereafter, and again during our phone call that your clients did not properly invoke 47 C.F.R. § 20.11(e).<sup>2</sup> An ILEC seeking to invoke the rights and remedies under the rule must do two things before any obligations attach to the CMRS provider. First the ILEC must "request interconnection." Second, the ILEC must expressly invoke "the negotiation and arbitration procedures in section 252." None of your correspondence to date meets either of these separate requirements. Halo's initial replies to the first letters you sent on behalf of your clients more fully sets out our position on these procedures. As far as we are concerned, the situation has not changed.

At the same time, Halo has consistently expressed a willingness to discuss all potential avenues for a voluntary arrangement outside the context of § 252,<sup>3</sup> subject to our full reservation

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<sup>1</sup> The February 7 letter also requested specific information about your clients' networks. No responsive information has been provided.

<sup>2</sup> This rule was promulgated as part of the *T-Mobile Order*, Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Inter-carrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*"). This decision actually promulgated two new subsections to § 20.11. Along with new subsection (e) the FCC added subsection (d), which states that "Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs."

<sup>3</sup> To be clear, however, Halo's past expression of a willingness to discuss potential ways to reach voluntary agreement was not an indication that Halo is amenable to a § 252(a)(1) negotiation resulting in "binding agreement"

to assert that we are not and have never been engaged in § 252 negotiations. That was the purpose of our February 7, 2011 letter. This too has not changed. But I trust you understand that these discussions will not be centered only on finding an interim or permanent reciprocal compensation price that will apply in the context of indirect interconnection. The only benefit to Halo will come from direct IP-based interconnection. Thus we do not agree to defer that topic until later. Nor do we agree to the "direct" interconnection terms in the template ICA that use access-based arrangements that we still do not fully understand.

Your April 8 letters completely ignore all of this, and assume that 47 C.F.R. § 20.11(e) has been invoked and some interim requirements can and do apply. As noted, we disagree. Further, your April 8 letters imply that your clients somehow believe they can invoke that rule and yet limit the parties' discussions to only § 251(b)(5) reciprocal compensation and § 251(a) indirect interconnection. Again, Halo respectfully disagrees.

Section 20.11(e) requires more than just terms for § 251(b)(5) reciprocal compensation related to indirect traffic exchange. Section 20.11(e) speaks to "interconnection" as well as traffic exchange. "Interconnection is 'the linking of two networks for the mutual exchange of traffic.'" See 47 C.F.R § 51.5 (definitions). "Interconnection" is separate from, and "does not include the transport and termination of traffic." *Id.* FCC rule 20.11(e) allows invocation of "the negotiation and arbitration procedures contained in section 252 of the Act." *Id.* In turn, § 252 is all about implementing *both* § 251(b) and (c). The Texas PUC expressly held that it lacks jurisdiction over attempts to implement only § 251(a) and/or (b), and if the competing carrier provides telephone exchange service and/or exchange access service then that is by definition a § 251(c)(2) issue. If and when your clients properly invoke § 20.11(e) then Halo will raise as open issues and if necessary seek arbitrated terms implementing § 251(c)(2), (4) and (6).

Further, reciprocal compensation is merely one of the duties applicable to LECs under § 251(b). Any discussions the parties have as a result of a proper § 20.11(e) request will also include resale, number portability, dialing parity and access to rights of way, consistent with § 251(b)(1) (4). Section 251(b)(5) reciprocal compensation also must meet the "additional cost" standard set out in § 252(d), and implement the FCC's substantive rules that flesh out this standard.

Regardless of the context, Halo seeks terms for direct connection with your clients. Halo's network is 4G, and uses Internet Protocol. Thus, Halo desires "IP"-based interconnection and will oppose any attempt to require Halo to bear the cost of protocol conversion to/from TDM. Your April 8 letters mention an alleged "tremendous" volume of traffic currently being exchanged by the parties, then suggest that direct interconnection should be deferred. This is a *non sequitor* and illogical, to say nothing of being operationally inefficient.

While we continue to insist that the parties are not operating in the § 252 context, it appears your clients disagree. Therefore, without waiver of our primary position, but in the alternative, please consider the following to be Halo's request for cost and network information so that Halo can devise and propose TELRIC-compliant prices and technically feasible interconnection terms and requirements.

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terms "without regard to the standards set forth in subsections (b) and (c) of section 251." Should the parties ever begin the § 252 process Halo will demand strict adherence to and complete implementation of both subsections in § 251. and will also insist that the substantive requirements in § 252(d) apply as well.



Stephen G. Kraskin

RE: "'Request for Interconnection' from National and Roanoke" to Halo Wireless, Inc.

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Specifically, Halo requests:

1. Cost studies using TELRIC principles that support each of your clients' proposed pricing for interconnection, traffic exchange, and collocation.
2. Cost studies reflecting your clients' claimed avoided cost for resale purposes.
3. Studies that will support your proposed prices and terms for access to poles, conduits and rights of way in the manner required by 47 C.F.R. § 51.031.
4. Halo now formally requests and demands production of the information we sought in our February 7, 2011 letter, but was not provided. We do not know the extent to which your clients' various switches are able to support SIP and gateway capabilities or have IP-based capabilities through some other means.<sup>4</sup>
5. Please provide further information about each of your clients' networks that will allow Halo to determine the best means by which Halo could establish a single point of interconnection on your clients' network via direct IP connection. As noted in our February 7, 2011 letter we also require information related to Internet and IP capabilities in and to your clients' areas.

I note that if your position is that we are operating in the § 252 context, your clients have the duty to produce this information. *See* 47 C.F.R. § 51.301(c)(8)(i) and (ii).

Halo is reviewing the ICAs you sent last week. We will in short order return them with proposed edits. It will not be possible however to completely develop prices, terms and conditions until the foregoing information is received.

Halo will keep its prior offer open for another 15 days, and I encourage your clients to accept it.

You may contact me at your convenience and we can further discuss this and any other matters you wish to raise. My contact information is on the letterhead.

Sincerely,

W. Scott McCollough

<sup>4</sup> Nortex has some of these capabilities. *See* Texas PUC Docket No. 37804 -Application of Nortex Communications for Approval of Revised Depreciation Rates, Accelerated Depreciation Rate and Notification of New Rate Pursuant to P.U.C. SUBST. R. §26.206, Nortex February 24, 2011 Notice. Interchange Item 9.



McCollough | Henry

## **ATTACHMENT E**

**§ 51.713 Bill-and-keep arrangements for reciprocal compensation.**

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

**§ 51.715 Interim transport and termination pricing.**

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings describes in § 51.707, an incumbent LEC shall use these state-determined rates as interim rates.

**§ 51.715 Interim transport and termination pricing. (Cont'd)**

(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in § 51.707 (b)(2)).

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of telecommunications traffic subject to the interim arrangement:

- (1) A voluntary agreement has been negotiated and approved by a state commission;
- (2) An agreement has been arbitrated and approved by a state commission; or
- (3) The period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equaled the rates later established by the state commission pursuant to § 51.705.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

**§ 51.717 Renegotiation of existing non-reciprocal arrangements.**

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

## **ATTACHMENT F**

**Nortex Communications**  
**Proxy Transport and Termination Rate Calculation**  
**NECA Rates Effective 7/1/10; Rate Band 9**

TRANSPORT ROUTE	RATE ELEMENTS	MILES	BP	QTY	RATE	PER DS1 AMOUNT	PER MOU AMOUNT
							216,000
MUENSTER - DLLSTXRI							
	DS1 DT Facility	69	29%	1	\$23.48	\$469.83	\$0.002175
	DS1 DT Termination			1	\$121.83	\$121.83	\$0.000564
	Total DS1 DT Transport Charges					\$591.66	\$0.002739
VALLEY VIEW - DLLSTXRI							
	DS1 DT Facility	54	11%	1	\$23.48	\$139.47	\$0.000646
	DS1 DT Termination			1	\$121.83	\$121.83	\$0.000564
	Total DS1 DT Transport Charges					\$261.30	\$0.001210
ALL ROUTES - TOTAL							
	DS1 DT Facility	12.98		2	\$23.48	\$609.31	\$0.002821
	DS1 DT Termination			2	\$121.83	\$243.66	\$0.001128
	Total DS1 DT Transport Charges					\$852.97	\$0.003949
ALL ROUTES - AVERAGE							
	DS1 DT Facility	12.97			\$23.48	\$304.65	\$0.001410
	DS1 DT Termination				\$121.83	\$121.83	\$0.000564
	Total DS1 DT Transport Charges					\$426.48	\$0.001974
	Proxy Termination Rate, per MOU						\$0.004000
	Proxy Tandem Switching Rate, per MOU						\$0.001500
	Total Proxy Transport & Termination Rate, per MOU						<u>\$0.007474</u>

## **ATTACHMENT G**

**§ 51.713 Bill-and-keep arrangements for reciprocal compensation.**

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

**§ 51.715 Interim transport and termination pricing.**

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings describes in § 51.707, an incumbent LEC shall use these state-determined rates as interim rates.

**§ 51.715 Interim transport and termination pricing. (Cont'd)**

(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in § 51.707 (b)(2)).

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of telecommunications traffic subject to the interim arrangement:

- (1) A voluntary agreement has been negotiated and approved by a state commission;
- (2) An agreement has been arbitrated and approved by a state commission; or
- (3) The period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equaled the rates later established by the state commission pursuant to § 51.705.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

**§ 51.717 Renegotiation of existing non-reciprocal arrangements.**

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

**§ 51.705 Incumbent LECs' rates for transport and termination.**

(a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

- (1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;
- (2) Default proxies, as provided in § 51.707; or
- (3) A bill-and-keep arrangement, as provided in § 51.713.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

**Chronology:** Adopted: 08/08/96, amended: 07/18/97, 01/25/99, 04/27/01

**§ 51.707 Default proxies for incumbent LECs' transport and termination rates.**

(a) A state commission may determine that the cost information available to it with respect to transport and termination of telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of telecommunications traffic, or for specific components included within transport and termination.

(b) If a state commission establishes rates for transport and termination of telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:

(1) *Termination.* The incumbent LEC's rates for the termination of telecommunications traffic shall be no greater than 0.4 cents (\$0.004) per minute, and no less than 0.2 cents (\$0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents (\$0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.

(2) *Transport.* The incumbent LEC's rates for transport of telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(c) (3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.

**Chronology:** Adopted: 08/08/96, amended: 09/27/96, 07/18/97, 01/25/99, 04/27/01, vacated: 07/18/00