at&t

Tracy W. Hatch
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (850) 577-5508
thatch@att.com

June 26, 2012

Ms. Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 110234-TP
Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida Against Halo Wireless, Inc.

Dear Ms. Cole:

Enclosed is an original and seven copies of BellSouth Telecommunications, LLC d/b/a AT&T Florida's Response in Opposition to Halo's Motion to Compel Discovery Reponses, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,

Tracy W. Hatch

cc: Parties of Record
Gregory R. Follensbee
Suzanne L. Montgomery

COM _____
APA _____
ECR _____
GCL 6
RAD 1
SRC _____
ADM _____
OPC _____
CLK _____

Certificate of Service
Docket No. 110234-TP

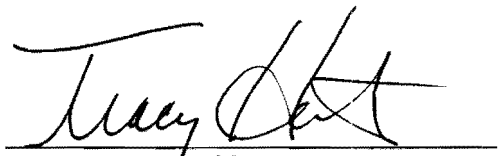
I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail or Hand Delivery* this 26th day of June, 2012 to the following:

Larry Harris, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
lharris@psc.state.fl.us

Mr. Russell Wiseman
President
Halo Wireless, Inc.
2351 West Northwest Highway
Suite 120
Dallas, Texas 75220
rwiseman@halowireless.com

Gary V. Perko*
Brooke E. Lewis
Hopping Green & Sams, P.A.
P.O. Box 6526
119 S. Monroe Street, Suite 300 (32301)
Tallahassee, Florida 32314
Tel. No. (850) 222-7500
Fax No. (850) 224-8551
gperko@hgslaw.com
BrookeL@hgslaw.com
Attys. for Halo Wireless, Inc.

Jennifer M. Larson Attorney at Law
Troy P. Majoue
McGuire, Craddock & Strother, PC
2501 N. Harwood, Suite 1800
Dallas, Texas 75201
Tel. No.: (214) 954-6851
Fax. No.:(214) 954-6868
jlarson@mcslaw.com
tmajoue@mcslaw.com
Attys. for Halo Wireless, Inc.



Tracy W. Hatch

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida Against Halo Wireless, Inc.	)	Docket No.: 110234-TP
	)	Filed: June 26, 2012

AT&T FLORIDA'S RESPONSE IN OPPOSITION TO HALO'S MOTION TO COMPEL

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), in accordance with Rule 28-106.204, Florida Administrative Code, respectfully submits this Response in Opposition to Halo's Motion to Compel Discovery Responses to Halo's First Set of Interrogatories, Requests for Admission and Requests for Production of Documents, filed June 19, 2012 (the "Motion").

Halo's Motion should be denied in its entirety. AT&T Florida provided substantive responses to Halo's discovery requests that were in the proper format and which were proper under Florida law. Many of Halo's discovery requests were objectionable, however, and AT&T Florida stands by its objections.

Halo's Motion discusses the discovery requests collectively. Because the Commission will need to resolve each discovery request individually, we address each discovery request that is the subject of the Motion separately and explain why the Motion should be denied.

A. Interrogatories

Interrogatory 2: Identify all Documents which you reviewed prior to filing the Complaint.

Response: In addition to its general objections, AT&T Florida objects to this interrogatory on the grounds that it is overly broad and would be unduly burdensome for AT&T Florida to research the answer to the Interrogatory and that the information it seeks is (i) protected by the work product doctrine and (ii) neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

A party that propounds discovery needs to make reasonably clear what it is asking for. Halo failed to do that with this interrogatory. The interrogatory asks AT&T Florida to identify "all documents which you reviewed prior to filing the Complaint." Taken at face value, that means each and every document that any employee or representative of AT&T Florida reviewed, *regardless of the subject matter*, at *any* time before July 25, 2011, which is when the Complaint was filed. Obviously, that is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, since potentially thousands of employees or representatives of AT&T Florida or its affiliated companies reviewed myriad documents in the weeks, months and years before July 25, 2011, the vast majority of which had nothing to do with this case. Without context, scope or limitations of any sort, this interrogatory is the ultimate "fishing expedition."

Halo, of course, would say it did not mean to ask for *all* documents that AT&T Florida reviewed before July 25, 2011, and that is surely true. But that is what the interrogatory says, and there is no telling what Halo actually intended to ask. Did Halo mean to ask for documents that AT&T Florida's lawyers relied on when they drafted the Complaint (in which case the work product objection clearly applies)? Did Halo mean to ask for all documents that relate to Halo that any AT&T representative read before the Complaint was filed? For documents that relate to the claims in the case? The discovery rules do not require AT&T Florida to guess what Halo meant, Rather, AT&T Florida is entitled to take Halo's discovery requests at face value, especially when, as here, it is impossible to determine what Halo really had in mind.[1] And read at face value, the interrogatory is ridiculously overbroad, and it would be extraordinarily

[1] AT&T Florida is not saying that it is always permissible to read a data request literally. For example, if Halo asked an interrogatory about the time period from July 25, 2011, to October 25, 3011, AT&T Florida would read the "3" as a typo, because it is obvious what was intended. Here, in contrast, Halo's interrogatory suffers from an utter failure to communicate clearly that AT&T Florida cannot cure for Halo.

burdensome, if not impossible, for AT&T Florida to try to determine the response by investigating who looked at what documents before the Complaint was filed.[2]

AT&T Florida also objected to Interrogatory 2 on the ground that the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and that objection is perfectly sound. In fact, Halo does not even try to explain how the information could be used in this proceeding. Instead, Halo merely asserts, as a general proposition and without a word of explanation, that the information it seeks is relevant.[3] But it quite simply is not. Any description that Halo could supply as to what information it believes is relevant or how it might lead to admissible evidence would graphically illustrate Halo's failure in the first instance to craft an appropriate request.

AT&T Florida's objection to Interrogatory 2 should be sustained.

Interrogatory 6: Define "end point" as used by AT&T and provide the source of the definition.

Response: In addition to its general objections, AT&T Florida objects to this Interrogatory on the grounds that (i) the absence of context makes the Interrogatory vague and ambiguous; and (ii) to the best of AT&T Florida's knowledge, AT&T Florida has not used the term "end point" in this proceeding, with the exception of a reference to a use of that term by Halo.

---

[2] Halo contends that AT&T Florida must "quantify" the burden in order for its objection to be sustained, and cites one decision that so ruled under the particular circumstances of that case. Motion at 3. But there is no general rule that requires a party that objects to a discovery request as overly broad and unduly burdensome to quantify the burden, and it would be impossible for AT&T Florida to do so here. There is no way to determine how much effort, or how many hours, it would take to try to identify all documents that anyone at AT&T reviewed on any and all subjects before July 25, 2011.

[3] Motion at 2.

As AT&T Florida's objection correctly states, this interrogatory is vague and ambiguous because of the absence of context. "End point" can mean many things.[4] Given the subject matter of the case, Halo probably meant to refer to the end point of a call; or the end point of a communication; or the end point of a telecommunication; or the end point of an IP session (all of which are arguably pertinent to this case). Instead, Halo again left AT&T Florida to guess what Halo had in mind.

AT&T Florida also objected on the ground that it had not, to the best of its knowledge, used the term "end point" in this proceeding, with the exception of a reference to a use of that term by Halo. Halo responds that AT&T Florida witness Neinast twice used the term "end-point" (with the hyphen) in his pre-filed testimony. Halo can not use a Motion to Compel as a vehicle to rehabilitate the failures in its underlying request. If Halo wanted to ask what Mr. Neinast meant by "end-point" in those two instances, that is what Halo should have asked. And now that Halo has clarified that that is what it wants to know, the way to get the answer is obvious: Ask Mr. Neinast at hearing. If anything about Halo's inquiry is relevant, it is what Mr. Neinast meant by "end-point" in the specific context of his testimony, not how AT&T might define "end point" in the abstract without any contextual tie to this proceeding.

AT&T Florida's objection to Interrogatory 6 should be sustained.

Interrogatory 11: Describe in detail every step you contend Halo should have taken to avoid delivering intrastate "wireline" (as you define that term) "originated" (as you define that term) calls to AT&T.

---

[4] For example, according to Webster's Encyclopedic Unabridged Dictionary of the English Language (1996 ed.), it can mean "the point on each side of an interval marking its extremity on that side," or "a final goal or finishing point; terminus" or "the point in a titration usually noting the completion of a reaction and marked by a change of some kind as of the color of an indicator."

Response: In addition to its general objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence. Halo has breached its wireless ICA with AT&T Florida by delivering to AT&T Florida traffic that did not originate through wireless transmitting and receiving facilities. Halo took no step to avoid that breach of ICA, and has denied any obligation to do so. It is not AT&T Florida's responsibility to counsel Halo on how to abide by its contract obligations, and AT&T Florida has not undertaken to identify, and has no duty to identify, steps that Halo should have taken in order to do so.

Halo does not say anything in its Motion about why AT&T Florida should be required to respond to Interrogatory 11. AT&T Florida stands on its objection. So far, the one state commission and the three additional state commission Staffs that have addressed the question have all concluded that Halo breached its interconnection agreements ("ICAs") with AT&T by delivering traffic that did not originate through wireless transmitting and receiving facilities, as the ICAs require. And Halo did not do that accidentally. Rather, it made no effort to comply with the contract. Interrogatory 11 asks AT&T Florida to describe in detail what Halo should have done in order to avoid breaching its contract with AT&T Florida. The requested information is irrelevant, because regardless what AT&T Florida might say Halo should have done, the inescapable and fatal fact of the matter is that Halo did nothing.

That said, AT&T Florida has, notwithstanding its valid objections, answered the interrogatory. The answer is that AT&T Florida has not identified (even internally) steps Halo should have taken in order to avoid sending wireline-originated traffic to AT&T Florida. The purpose of discovery is to get at existing information. AT&T Florida cannot properly be required to create information in order to provide it to Halo.

AT&T Florida's objection to Interrogatory 11should be sustained.

B. Requests for Admission

RFA 1: It is possible for a single communication to involve more than one "origination" point (as you define that term).

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the grounds that (i) its use of the undefined term "communication" renders it is vague and ambiguous; and (ii) it seeks a legal conclusion.

"Communication" can mean many things, and the parties have used the term with nuanced and sometimes differing meanings in their ongoing litigation in Florida and elsewhere. Accordingly, AT&T Florida's first objection to this Request for Admission is that its use of the undefined term "communication" renders it vague and ambiguous. Significantly, AT&T Florida did not make a mere boilerplate objection that the request was vague and ambiguous. Instead, it made its objection very specific by explaining precisely why it is vague and ambiguous.

Halo's motion utterly fails to come to address the objection. Halo merely asserts, as if saying it makes it so, that in its vagueness objection to this and four other RFAs, "AT&T Florida is incorrect as it is obvious that the above RFAs are clearly stated and can be answered with a simple admission or denial, with a brief explanation if needed."[5] That is insufficient. AT&T Florida having explained precisely why this particular interrogatory is vague, Halo needed to give at least some explanation why it is not, rather than merely asserting that AT&T Florida is obviously wrong. For in fact, AT&T Florida is not wrong; "communication" can have differing meanings, even within the context of this case.

AT&T Florida also objected to this RFA on the ground that it sought a legal conclusion. We discuss that objection below, in connection with RFA 2. Here we note only that Halo does not dispute, and cannot dispute, that RFA 1 sets forth a purely legal conclusion.

---

[5] Motion at 6.

AT&T Florida's objection to RFA 1 should be sustained.

RFA 2: If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Florida fall within the definition of "Local Traffic" as defined in Section I.D. of the ICA.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

This RFA asks a purely legal question; the question has nothing to do with getting at any real-world facts, or at how the law applies to such facts. Halo's Motion does not deny that.

Instead, Halo argues that the objection is improper because a party cannot refuse to answer an RFA on the ground that it "presents a genuine issue for trial." *Id.* Halo is confused. AT&T Florida's objection is *not* that the RFA inquires into a matter that presents a genuine issue for trial. Rather, it is that the RFA asks a pure question of law. That is an entirely different matter, and because it is an entirely different matter, neither of the two cases that Halo cites in support of its position has anything to do with AT&T Florida's objection.

The first case Halo cites makes clear that Halo is mixing apples with oranges. The question in *Shaw v. State*, 616 So. 2d 1094 (Fla. 4th DCA 1993), (Motion at 6) was whether a party was required to admit or deny a proposition (namely, that a videotape was an account of a certain crime) that (i) went to the central issue in the case and (ii) was a purely *factual* proposition. *See id.* at 1095. The court concluded that under the current version Florida Rule of Civil Procedure 1.370, the request for admission was proper *even though it went to the central issue in the case*. *See id d.* at 1095-96. *Shaw* has nothing to do with the entirely separate question whether a party must respond to an RFA that goes to a purely legal question, because the RFA at issue in *Shaw* was purely factual.

Halo's other case, *Salazar v. Valle*, 360 So. 2d 132 (Fla. 3d DCA 1978), also has nothing to do with whether a request for admission can inquire into a purely legal question. *Salazar*, like *Shaw*, holds that an RFA is not objectionable merely because it goes to the heart of the case. But the RFA in *Salazar* was not a purely legal question, like Halo's RFA 2; rather, it was an application of law to fact (namely, whether the defendant's conduct was negligent).

In short, while Halo is correct that an RFA is not objectionable merely because it is poses the ultimate question in the case, or a question that presents a genuine issue for trial, that has nothing to do with AT&T Florida's objection, which is that RFA 2 asks a purely legal question. And the law with respect to that objection is clear: While a party can be required to admit or deny a proposition of fact, or of application of law to the facts of the case, a party cannot be required to respond to an RFA that asks a purely legal question. As one court has explained,

> We conclude that while the current rule now allows for requests directed to opinions, facts, and the application of law to facts, it continues to make no provision for requests seeking a purely legal conclusion. Accordingly, because the response to a request seeking an admission or denial whether a duty of care is owed is a purely legal conclusion, prior case law, which holds that such requests are inappropriate and that a response is thus unnecessary, is still applicable.

Davis v. Dollar Rent A Car Sys., Inc., 909 So. 2d 297, 300 (Fla. 5th DCA 2004). There can be no question but that RFA 2 sets forth a purely legal conclusion. Moreover, as noted above, Halo does not dispute that. Accordingly, AT&T Florida's objection must be sustained.

AT&T Florida's objection to RFA 2 should be sustained.

RFA 3:	If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Florida are consistent with the usage contemplated by the definition of "Local Interconnection" in Section I.E. of the ICA.
Response:	In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 3 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 3 should be sustained.

RFA 4: If Transcom is an end user, Halo is in compliance with the ICA Amendment provision requiring that its traffic "originates through wireless transmission and receiving facilities before Carrier delivers traffic to AT&T for termination."

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 4 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 4 should be sustained.

RFA 6: When a call "originates" (as defined by you) in IP format and stays in IP format until it is converted to "TDM" by Halo proper to handoff to AT&T in Florida then the call "originates on the Public Switched Telephone Network at Halo's Base Station.

Response: AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 6 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 6 should be sustained.

RFA 10: AT&T contends its affiliate that provides voice over Internet Protocol (VoIP) service in association with U-Verse is not a telecommunications carrier.

Response: AT&T Florida objects to this Request for Admission on the grounds that (i) it seeks a legal conclusion and (ii) the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably

calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Florida states that to the best of its knowledge, AT&T Florida has made no contention and makes no contention that its affiliate that provides VoIP service in association with U-Verse is or is not a telecommunications carrier.

AT&T Florida's objections are sound, and the Motion does not even address the relevance objection. That said, AT&T Florida responded to RFA 10. To the extent the import of the last sentence of the Response may not be entirely clear to Halo, it is a denial: AT&T Florida does not contend that the referenced affiliate is a telecommunications carrier, or that it is not a telecommunications carrier. AT&T Florida has made, and makes, neither contention, and cannot properly be required to make a contention solely in order to respond to Halo's discovery request.

AT&T Florida's objection to RFA 10 should be sustained.

RFA 11: AT&T contends its affiliate that provides VoIP service in association with U-Verse is an Enhanced Service Provider, as defined by the FCC.

Response: AT&T Florida objects to this Request for Admission on the grounds that (i) it seeks a legal conclusion and (ii) the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Florida states that to the best of its knowledge, AT&T Florida as made no contention and makes no contention that its affiliate that provides VoIP service in association with U-Verse is or is not an Enhanced Service Provider, as defined by the FCC.

The discussion of RFA 10 applies to RFA 11 as well.

AT&T Florida's objection to RFA 11 should be sustained.

RFA 15: An end user cannot be an "intermediate switching point" in a call.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the grounds that it (i) seeks a legal

conclusion and (ii) is vague and ambiguous because of its use of the phrase "intermediate switching point" in quotation marks without identifying the source of the quote.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 15 sets forth a purely legal conclusion. In addition, the Motion does not address, and Halo therefore waived its right to address, AT&T Florida's second objection. The RFA's use of "intermediate switching point," in quote marks, implies an undisclosed source of the quote.

AT&T Florida's objection to RFA 15 should be sustained.

RFA 16: An end user can be an "intermediate switching point" in a call.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the grounds that it (i) seeks a legal conclusion and (ii) is vague and ambiguous because of its use of the phrase "intermediate switching point" in quotation marks without identifying the source of the quote.

The discussion of RFA 10 applies to RFA11 as well.

AT&T Florida's objection to RFA 16 should be sustained.

RFA 17: If the calls in issue do not "originate" on Halo's network, then the calls in issue meet the definition of "Intermediary Traffic" in Section I.C. of the ICA.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 17 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 17 should be sustained.

RFA 18: For the calls that AT&T asserts constitute a breach, Halo is providing "telephone exchange service" as defined in § 153(54) of the Communications Act.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 18 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 18 should be sustained.

RFA 19: For the calls that AT&T asserts constitute a breach, Halo is providing "exchange access service" as defined in § 153(20) of the Communications Act.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 19 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 19 should be sustained.

RFA 20: For the calls that AT&T asserts constitute a breach, Halo is providing "telephone toll service" as defined in § 153(55) of the Communications Act.

Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 20 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 20 should be sustained.

RFA 21: For the calls that AT&T asserts constitute a breach, Halo is providing "Interconnected VoIP Service" as defined in § 153(25) of the Communications Act.

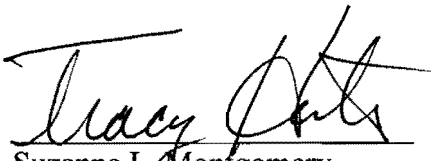
Response: In addition to its general objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 21 sets forth a purely legal conclusion.

AT&T Florida's objection to RFA 21 should be sustained.

Respectfully submitted this 26nd day of June, 2012.

AT&T FLORIDA



Suzanne L. Montgomery
Authorized House Counsel No. 94116
Tracy W. Hatch
Florida Bar No. 449441
c/o Gregory R. Follensbee
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558
sm6526@att.com
th9497@att.com