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December 23, 2011

VIA EMAIL TO sharla.dillon@tn.gov

Dr. Kenneth C. Hill, Chairman
Tennessee Regulatory Authority
c/o Sharla Dillon, Docket & Records Manager
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: DOCKET NO.: 11-00119, *BellSouth Telecommunications, LLC*
dba AT&T Tennessee v. Halo Wireless, Inc.
and

DOCKET NO.: 11-00108, *Concord Telephone Exchange, Inc., et*
al. v. Halo Wireless, Inc. and Transcom Enhanced Services, Inc., et
al.

Dear Chairman Hill:

As you know, this firm represents Halo Wireless, Inc. ("Halo") and Transcom Enhanced Services, Inc. ("Transcom"). At the hearings on the motions to dismiss held on December 12, 2011, the parties discussed with you whether a schedule should be set in Docket 11-00108, and the decision was made that a schedule would not be set until after you had had an opportunity to rule on the motions to dismiss. Transcom and Halo were given to believe, however, that there would be discussion as to appropriate dates prior to the entry of any schedule.

Yesterday, however, without any prior discussion or notice as to any dates being considered, we received a Notice of Procedural Schedule (the "Notice") in Docket 11-00108. Pursuant to the Notice, Transcom and Halo are expected to file direct testimony by January 6, 2012, file rebuttal testimony on January 13, and appear with witnesses for a final hearing on the merits on January 18. Under such a schedule, Halo and Transcom would be required to submit direct testimony in Docket 11-00108 only three days after rebuttal testimony is due in Docket 11-00119, and on the same day as the prehearing memorandum is due in Docket 11-00119. Under the Notice, rebuttal testimony in Docket 11-00108 would be due on January 13, 2012, a

mere seven days after direct testimony is due in that same matter and four days before the final hearing on the merits in Docket 11-00119. The Notice further schedules the final hearing in Docket 11-00108 on January 18, 2012, which is five days after the submission of rebuttal testimony in that matter and the day immediately following the final hearing scheduled in Docket 11-00119. Note further that it is our understanding that AT&T plans to present at least two witnesses in the final hearing on Docket 11-00119, which we believe virtually assures that the final hearing in that matter will last more than one day. If the TDS parties also present two or more witnesses, we believe the final hearing in Docket 11-00108 also will last more than one day. Thus Halo is scheduled for a multiple-day final hearing on January 17 against AT&T, and Halo and Transcom are scheduled for a multiple-day final hearing on January 18 against the TDS entities. Attorneys for AT&T and the TDS entities can separately prepare for their respective matters, but attorneys for Halo and Transcom must prepare for both at the same time and present their defensive cases, with witnesses, back to back.

The Notice imposes such onerous and overlapping requirements despite the fact that Scott McCollough and I told you in person, and on the record, that Scott McCollough was scheduled to be out for the entire second week of January for a medical absence. See Transcript of Status Conference in Docket 11-00119, November 21, 2011, at p. 25, lines 6-15. Mr. McCollough will check into a hospital in Washington State on January 8 and will not return home until late on January 13. You scheduled Docket 11-00119 tightly around that week. Now, in the Notice, you impose a schedule that assures that regulatory counsel to Halo and Transcom will not be available to assist with Docket 11-00108.

And even if Mr. McCollough were available, the Notice sets an impossible schedule. Docket 11-00108 involves different issues than the Docket 11-00119. It is simply not possible for attorneys for Halo and Transcom to be preparing rebuttal testimony, final briefing and preparing for final hearing in Docket 11-00108 at exactly the same time that those same attorneys must also be preparing direct testimony, rebuttal testimony and preparing for final hearing in Docket 11-00119. In addition, both Halo and Transcom have discovery responses due on January 6 and direct testimony due on January 13 in another matter.

The schedule set forth in the Notice denies due process of law to Halo and Transcom. The schedule is not "just" under TRA Rules 1220-1-2-.12(1)(i) or 1220-1-2-.22(2). Pursuant to Section 1220-1-2-06 of the TRA Rules, Halo and Transcom hereby move for the hearing officer to rescind the Notice and coordinate a new schedule with the parties. By way of proposal, we would propose the following dates for Docket 11-00108:

Pre-filed testimony due by January 23, 2012, no later than 2:00 p.m.

Rebuttal testimony due by January 31, 2012, no later than 2:00 p.m.

Merits hearing before full panel beginning February 6, 2012, at 9:00 a.m.

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Pursuant to Section 1220-1-2-06(2), Halo and Transcom request expedited treatment of this motion such that a decision be rendered by close of business December 27, 2011.

Sincerely yours,

MCGUIRE, CRADDOCK & STROTHER, P.C.

By: 

Steven H. Thomas

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