

MCS
McGUIRE, CRADDOCK & STROTHER, P.C.

2501 N. HARWOOD
SUITE 1800
DALLAS, TEXAS 75201
www.mcslaw.com

STEVEN H. THOMAS
DIRECT: 214.954.6845
stthomas@mcslaw.com
Licensed in New York and Texas

TELEPHONE: 214.954.6800
TELECOPIER: 214.954.6868

November 17, 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 11-00108, *Complaint of TDS Telecom, et al. v. Halo Wireless, Inc., et al.*, Tennessee Regulatory Authority

Dear Chairman Hill:

This letter serves as a response to the letter of November 10, 2011, from the Attorneys for Petitioners, H. LaDon Baltimore and Norman J. Kennard (the "Petitioners' Scheduling Letter"). Halo Wireless, Inc. ("Halo") opposes the schedule set forth in the Petitioners' Scheduling Letter for two reasons.

First, in light of the order entered by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "Bankruptcy Court") referenced in the Petitioners' Scheduling Letter and included therewith (the "Order"), the Petitioners' Scheduling Letter misses a crucial determination that the Commission must make before it may proceed at all. In the Order, the Bankruptcy Court ruled "that nothing in this Order precludes the TDS Movants from seeking relief from the Automatic Stay in this Court to pursue the Reserved Matters once a state commission has (i) first determined that it has jurisdiction over the issues raised in the TDS Proceedings; and (ii) then determined that the Debtor has violated applicable law over which the particular state commission has jurisdiction...." Order, pg. 2. A basic reading of the Order, therefore, requires that the Tennessee Regulatory Authority ("TRA") *first* determine that it has jurisdiction over the issues raised by the Petitioners in the above-referenced proceeding. The TRA has not yet done so. The letter and proposal inappropriately presumes the TRA will find that it has jurisdiction and will move forward on the merits.

The Petitioners' Scheduling Letter asks the TRA to ignore the Order and to proceed without first determining whether it has jurisdiction over the issues at hand. To remove the

requirement that the TRA determine that it has jurisdiction over the issues at hand before it proceeds is inconsistent with the Bankruptcy Court's Order. The TRA cannot and should not implement a procedural schedule for progressing to consideration of the merits until it determines that it does indeed have jurisdiction. We also submit that no schedule can be developed unless and until the TRA concludes it has jurisdiction over some issues, because the schedule will be very much controlled by the specific issues, if any, that remain.

Second, the Petitioners' Scheduling Letter proposes a very aggressive, and likely impossible, schedule under which the TRA may hear the above-referenced proceeding. Remember that the Bankruptcy Court's Order, and two other identical orders entered as to AT&T and certain Texas and Missouri telephone companies (collectively, the "Orders"), ruled that twenty state commission proceedings (including this proceeding), constitute actions "by a governmental unit" and that such actions were "to enforce such governmental unit's police or regulatory power." If all twenty state commission proceedings are ultimately allowed to proceed, and if all of the state commissions decide that they have some jurisdiction over the issues involved, Halo will be defending itself in twenty state commission proceedings in ten states. Halo cannot reasonably be expected to defend itself in twenty simultaneous state commission proceedings; Halo does not have twenty separate litigation teams. There will have to be some coordination in scheduling to protect Halo's right to due process. Certainly, the schedule proposed in the Petitioners' Scheduling Letter is unreasonable, given the circumstances, and Halo opposes it.

Sincerely yours,

McGUIRE, CRADDOCK & STROTHER, P.C.

By: 

Steven H. Thomas

cc: H. LaDon Baltimore, Esq. *(Via Email)*
Norman J. Kennard, Esq. *(Via Email)*