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January 13, 2012

VIA HAND DELIVERY

filed electronically in docket office on 01/13/12

Hon. Kenneth Hill, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Complaint of BellSouth Telecommunications, Inc. dba AT&T Tennessee v. Halo Wireless, Inc.*  
Docket No. 11-00119

Dear Chairman Hill,

I am writing regarding a procedural issue that has arisen in connection with the hearing in the above-referenced docket, which is scheduled for hearing this Tuesday, January 17.

Yesterday afternoon, January 12, at 3:30 pm, I received a call from counsel for Halo. Counsel informed me that it would be sending a subpoena for discovery of information relating to this case. That purported subpoena was sent by email and is attached. AT&T does not agree that this is a valid or enforceable subpoena under Tennessee law. Please consider this to be AT&T's objection, or, to the extent required, its motion to quash.

TRA Rule 1220-1-2-.11 governs the use of discovery in contested cases at the Authority and gives parties the right to petition for discovery. Halo never did so. Moreover, Halo cannot explain this last minute request for discovery by suggesting that it only recently became aware of the nature of AT&T's claims or testimony in this case. Halo has been aware of AT&T's claims against it since the complaint was filed on July 26, 2011, and it has had AT&T's direct testimony since December 19.

AT&T believes that this request for discovery is not at all consistent with the TRA's rules, its past practices, or even state law regarding the use of administrative subpoenas. Although the unsigned subpoena purports to issue from the TRA, counsel apparently did not seek permission or even notify the Authority of its intent to issue it. Moreover, while the Hearing Officer conducted a status conference to establish the schedule for this case and repeatedly encouraged the parties to contact Ms. Blackwell with any procedural issue, Halo's counsel never once mentioned the need for discovery in this case nor requested a schedule addressing discovery.

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Without waiving its objection or its right to have the purported subpoena quashed, and in a good faith attempt to avoid further delay that may result from arguing about Halo's procedurally-improper discovery request, AT&T is willing to provide voluntarily to counsel the SS7-based data input and the detailed study output which supports AT&T's analysis of Halo's traffic. The information will be provided on a DVD disc. The material is too voluminous to provide via email. Halo's request seeks other information, which appears to relate to cases pending in other states, and AT&T objects to producing those materials. The material that AT&T will voluntarily produce includes telephone numbers, which are considered confidential information under both state law and federal law. Accordingly, it will be necessary for the Authority to enter a protective order regarding this information before it can be produced. AT&T suggests that the attached protective order, which was developed for use in a prior carrier-to-carrier arbitration, would be sufficient for this case.

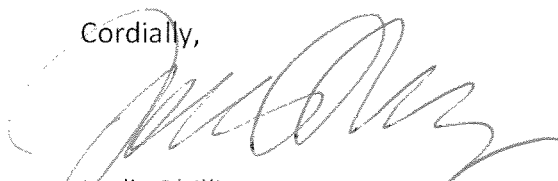
AT&T is not asking for any discovery from Halo in this docket.

To the extent that there was a limited amount of time between the filing of testimony and the hearing in this matter, that is due to the numerous delays that Halo caused by its bankruptcy filing and its inappropriate attempt to remove this case to federal court. The statutory timetable, which requires the case to be concluded by January 26, has been in place since the enactment of the Market Regulation Act in 2009. The existence of protracted litigation relating to Halo and pending throughout the country, all of which addresses the same issue, makes it impossible to believe that Halo only became aware yesterday of its desire to obtain discovery in Tennessee. Clearly, this is yet another attempt by Halo to delay having the merits of AT&T's claims decided by the Authority.

Finally, I am aware that Halo has represented to the Texas state commission (in the context of scheduling another matter) that the hearing of this case will take at least two and possibly three days. AT&T does not agree with that representation and believes that one day will be sufficient.

AT&T hopes that this letter will assist the Authority in being prepared to handle the entry of a protective order at or before the hearing in order to avoid still more delay. We look forward to seeing you on Tuesday.

Cordially,



Joelle Phillips

cc: Ms Tabitha Blackwell

[illegible]

### HIPAA NOTICE

A copy of this subpoena has been provided to counsel for the patient or the patient by mail or facsimile on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ so as to allow him/her seven (7) days to:

(A) serve the recipient of the subpoena by facsimile with a written objection to the subpoena, with a copy of the notice by facsimile to the party that served the subpoena, and

(B) simultaneously file and serve a motion for a protective order consistent with the requirements of T.R.C.P. 26.03, 26.07 and Local Rule § 22.10.

If no objection is made within seven (7) days of the above date, you shall process this subpoena and produce the documents by the date and time specified in the subpoena. The signature of counsel or party on the subpoena is certification that the above notice was provided to the patient.

**ADA Coordinator, Cristi Scott (862-5710)**

### RETURN ON SERVICE

Check one: (1 or 2 are for the return of an authorized officer or attorney; an attorney's return must be sworn to; 3 is for the witness who will acknowledge service and requires the witness's signature.)

1. \_\_\_\_ I certify that on the date indicated below I served a copy of this subpoena on the witness stated above by \_\_\_\_\_

2. \_\_\_\_ I failed to serve a copy of this subpoena on the witness because \_\_\_\_\_

3. \_\_\_\_ I acknowledge being served with this subpoena on the date indicated below:

<b>Sworn to and subscribed before me on this ____ day of _____, 20 ____.</b>  Signature of ____ Notary Public or ____ Deputy Clerk  <b>My Commission Expires:</b>	<b>DATE OF SERVICE</b>
	<b>SIGNATURE OF WITNESS, OFFICER, ATTORNEY OR ATTORNEY'S AGENT</b>

Submit three: Original, Witness Copy & File Copy

**SUBPOENA DUCES TECUM**

**EXHIBIT A**

1. Produce the raw SS7 data that was analyzed or from which any sample was taken in an effort to analyze whether Halo manipulated originating SS7 data.
2. Produce each data sample drawn from the raw SS7 data, and each sub-sampling of the raw data, used in any analysis performed by Respondent of traffic routed to Respondent.
3. Produce all data and documents probative of the allegation that Halo is inserting a different charge number into the signal data stream.
4. Produce all data and documents that identify the charge number or numbers that Respondent contends should be identified in the signal data stream.
5. Produce the data and documents probative of the contention that Halo deletes or alters charge number data.
6. Produce all communications between Respondent and Theiss Communications regarding Halo or Transcom.
7. Produce any reports, analyses, investigations, of Halo or Transcom's manipulation of SS7 data or charge number data.
8. Produce all communications between Respondent and the PUC that mention Halo or Transcom.
9. Produce data and documents that evidence each specific origination, termination, or transmission allegedly disguised by Halo.
10. Produce raw data and documents reviewed or analyzed by each expert witness who may be called to testify at the hearing on the merits scheduled for January 17, 2012.

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, LLC dba AT&T Tennessee v. Halo Wireless, Inc.*

Docket No. 11-00119

**PROTECTIVE ORDER**

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of such material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled; the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party in good faith deems to contain or constitute trade secrets, confidential commercial information, confidential research, development, financial statements or other commercially sensitive information, and which has been so designated by the producing party. A "producing party" is defined as the party creating the confidential information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order, and shall be stored, protected and maintained at the law offices of parties' counsel of record until such time that said material shall be returned, as provided for in paragraph 16. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 11 of this Order.
2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder.

Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. Except as limited by Paragraph 22 of this Order, CONFIDENTIAL INFORMATION shall be used only for purposes of this proceeding and shall be disclosed only to the following persons:

- (a) counsel of record and, if actively engaged in assisting counsel of record in this and the designated related proceedings, in-house counsel for the parties in this proceeding and any legal support personnel (e.g., paralegals and clerical employees) acting at the direction of counsel;
- (b) other employees, officers, or directors of a party, who are not engaged in strategic or competitive decision making, including, but not limited to, the sale or marketing or pricing of any products or services on behalf of the receiving party;
- (c) TRA Directors and members of the staff of the TRA;

Under no circumstances shall any CONFIDENTIAL INFORMATION or copies therefore be disclosed to or discussed with anyone associated with the marketing of services in competition with the products, goods or services of the producing party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION produced by another party to their respective clients, or to any other person or entity that does not have a need to know for purpose of preparing for or participating in this proceeding. Whenever an individual, other than the persons described in Section 3 (a), (b), (c) and (d) above, is designated to have access, then notice (by sending a copy of the executed affidavit) must be given to adversary counsel prior to the access being given to that individual and that individual, prior to seeing the material, must execute an affidavit that the information will not be disclosed and will not be used other than in this proceeding.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, officer or director of the parties, including any counsel representing the party who is to receive the CONFIDENTIAL INFORMATION, counsel shall provide a copy of this Order to the recipient employee or associate counsel who shall be bound by the terms of this Order.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality; provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) business days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and such failure is not discovered in time to provide such five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing Conference called for the purpose or at the Hearing on the merits may request designation of such documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge, or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained in the TRA Docket Room in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter, and this Protective Order. Such envelopes shall be maintained in a locked filing cabinet. The



envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the hearing on the merits of the case, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of such information during cross-examination so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and/or requested by the producing party in order to protect the confidential nature of the information.

9. Except for documents filed in the TRA Docket Room, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record or, if actively engaged in assisting counsel of record in this and the designated related proceedings, in the offices of in-house counsel for the parties and returned to the producing party pursuant to Paragraph 16 of this Order.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does

not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL by applying to the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents, information, or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge, or a court orders otherwise. A Motion to contest must be filed not later than ten (10) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than five (5) days prior to the Hearing on the Merits and shall be presented to the Authority at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality.

13. Non-party witnesses, including entities responding to subpoenas, data requests or other third party discovery propounded by parties or the TRA, shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness. A non-party witness' designation of information as confidential may be challenged under Paragraph 11 of this Order.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned by parties and nonparties who received CONFIDENTIAL INFORMATION to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days of a written request from the producing party, or, upon request by counsel for the producing party, counsel in possession of such documents shall certify to counsel of the producing party that all of the filings, exhibits, and other materials designated as CONFIDENTIAL INFORMATION and all copies thereof have been destroyed. Subject to the requirements of Section 7 above, the TRA may retain copies of information designated as CONFIDENTIAL. Counsel who received the filings, exhibits and other materials shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the producing party.

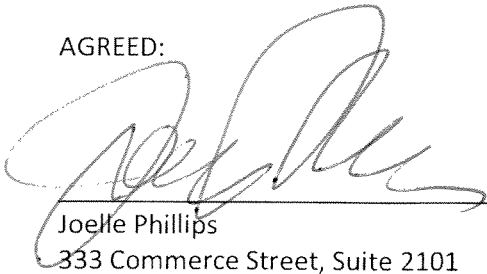
17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

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Hearing Officer

AGREED:



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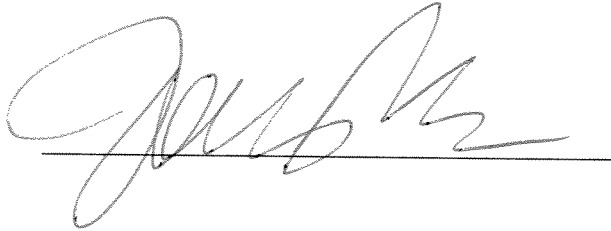
Attorneys for BellSouth Telecommunications, LLC dba AT&T Tennessee      Attorneys for Halo Wireless, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2012, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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[vkrajca@mcslaw.com](mailto:vkrajca@mcslaw.com)

A handwritten signature in black ink, appearing to read "Paul Davidson", is written over a horizontal line.