

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 19, 2011

IN RE:

**BELLSOUTH TELECOMMUNICATIONS LLC D/B/A
AT&T TENNESSEE V. HALO WIRELESS, INC.**

**DOCKET NO.
11-00119**

**ORDER DENYING MOTION TO ABATE, CONVENING A CONTESTED CASE
AND APPOINTING A HEARING OFFICER**

This matter came before the Tennessee Regulatory Authority (the “Authority” or “TRA”) at a regularly scheduled Authority Conference held on November 21, 2011, upon the filing of a *Complaint* by BellSouth Telecommunications, LLC d/b/a AT&T Tennessee (“AT&T”) against Halo Wireless, Inc. (“Halo Wireless”) on July 26, 2011. In its *Complaint*, AT&T alleges that the interconnection agreement between it and Halo Wireless does not authorize Halo Wireless to send AT&T traffic that does not originate in a wireless network, but that Halo Wireless is doing so “in the furtherance of an access charge avoidance scheme.”¹ As a result, AT&T alleges that Halo Wireless owes it significant amounts of money.² AT&T asks the TRA to grant it relief, including the termination of the interconnection agreement and the discontinuance of its provision of interconnection and traffic transit and termination service to Halo Wireless.³

On August 10, 2011, Halo Wireless filed a *Suggestion of Bankruptcy* with the Authority, giving notice that it has filed a voluntary petition for Chapter 11 relief in the United States Bankruptcy Court for the Eastern District of Texas (“Bankruptcy Court”).⁴ In its filing, Halo

¹ *Complaint*, p. 1 (July 26, 2011).

² *Id.*

³ *Id.* at 7.

⁴ *Suggestion of Bankruptcy*, p. 1 (August 10, 2011).

Wireless asserted that, pursuant to the provisions of 11 U.S.C. § 362, there was an automatic stay in place thereby prohibiting any further actions to be taken.⁵

On August 19, 2011, Halo Wireless filed a Notice with the Authority that this docket had been removed to the United States District Court, Middle District of Tennessee, Nashville Division (“District Court”).⁶ The District Court filed an Order remanding the case back to the TRA on November 1, 2011.⁷ On November 10, 2011, AT&T filed a letter notifying the Authority that this matter can now be considered by the TRA and requesting that this matter be placed on the next Authority Conference for the purpose of convening of a contested case and appointing a Hearing Officer.⁸

Halo Wireless filed a *Motion to Abate* on November 17, 2011. In the *Motion to Abate*, Halo Wireless states its opinion that the District Court and Bankruptcy Court erred in their respective analyses.⁹ Halo Wireless further states that it is seeking a stay with the District Court pending appeal and may seek a stay with the Fifth Circuit Court of Appeals pending its appeal to that Court.¹⁰ Halo Wireless asserts that “the most prudent and judicially efficient action for the TRA to take is to simply refrain from acting until the Eastern District of Texas and the Fifth Circuit Court of Appeals have had an opportunity to consider Halo’s motions to stay.”¹¹

During the regularly scheduled Authority Conference held on November 21, 2011, the panel found that this docket was properly before the Authority for continued action and, therefore, voted unanimously to deny the *Motion to Abate*, to convene a contested case proceeding and to appoint Chairman Kenneth C. Hill to act as Hearing Officer to handle any

⁵ *Id.* at 2.

⁶ *Notice of Removal to Federal Court* (August 19, 2011).

⁷ The District Court Order and Memorandum were filed with the Authority on November 7, 2011.

⁸ AT&T noted that the Bankruptcy Court had issued an Order “allowing this case to proceed at the TRA.” Letter from Joelle Phillips to Chairman Kenneth C. Hill (November 10, 2011). *See also Motion to Abate, Exhibit A* (November 17, 2011).


⁹ *Motion to Abate*, pp. 2-3 (November 17, 2011).

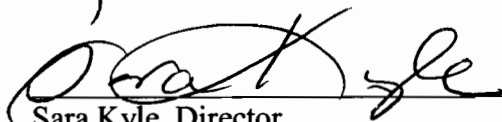
¹⁰ *Id.* at 3.

¹¹ *Id.*

preliminary matters, including entering a protective order, ruling on any intervention requests, setting a procedural schedule and addressing any other preliminary issues.

IT IS SO ORDERED.


Kenneth C. Hill, Chairman


Sara Kyle, Director


Mary W. Freeman, Director