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December 6, 2011

F. David Butler, Esquire
Senior Counsel
Public Service Commission of South Carolina
Post Office Box 11649
Columbia, South Carolina 29211

Re: BellSouth Telecommunications, LLC d/b/a AT&T South Carolina, Complainant/Petitioner v. Halo Wireless, Inc., Defendant/Respondent
Docket No. 2011-304-C

Dear Mr. Butler:

On the same day the Directive holding this matter in abeyance until further notice was issued, the United States Bankruptcy Court for the District of South Carolina ("the South Carolina Bankruptcy Court") entered its Order Granting Motion to Remand.[1] Accordingly, as explained below, the Commission is now authorized to "proceed to a conclusion" in this Docket. AT&T South Carolina, therefore, respectfully requests that the Hearing Officer convene a telephonic status conference with the parties to establish a procedural schedule for this Docket.

Procedural Background

On August 1, 2011, AT&T South Carolina notified the Commission that Halo had filed a Chapter 11 Bankruptcy Petition with the United States Bankruptcy Court, Eastern District of Texas ("the Texas Bankruptcy Court"). On October 11, 2011, Halo filed a Notice informing the Commission that it had removed this Docket to the South Carolina Bankruptcy Court.

Texas Bankruptcy Court Order: Automatic Stay Does Not Apply to This Docket

On October 26, 2011, the Texas Bankruptcy Court issued an Order finding that the automatic stay imposed by 11 U.S.C. §32 "is not applicable to" this Docket or to similar regulatory proceedings pending before other state commissions. *See* Attachment B at 1. The Order provides that this Docket "may be advanced to a conclusion" and that "a decision in respect of such regulatory matters may be rendered . . . ." *Id.* at 1-2. The only exception is that absent further order of the Texas Bankruptcy Court, the Commission cannot liquidate the amount of any claim against Halo or take "any action which affects the debtor-creditor relationship between [Halo] and any creditor or potential creditor." *Id.* at 2. The Commission, however, is

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[1] The South Carolina Bankruptcy Court placed a copy of this Order in the mail to the Commission on the same day the Directive was entered. *See* Attachment A. The Hearing Officer, therefore, understandably was not aware of this Order when the Directive was entered.

free to determine whether Halo has violated applicable law over which the Commission has jurisdiction. *Id.*

South Carolina Bankruptcy Court Order: Docket Remanded to the Commission

On December 1, 2011, the South Carolina Bankruptcy Court entered its Order remanding this matter to the Commission. *See* Attachment C. The Order notes that the Texas Bankruptcy Court "found that the automatic stay did not apply to the state commission proceedings and ordered that such proceedings continue to a conclusion," *id.* at 2, and it finds that:

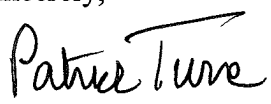
> The South Carolina PSC is primarily responsible for enacting and overseeing rates, regulations, terms, and conditions relating to telecommunication service providers and their [interconnection agreements]. As a result, the South Carolina PSC has jurisdiction over the claims presented before the Court, and it is in the best position, with expertise in such matters, to decide this dispute relating to the parties' [interconnection agreement]."

Id. at 3. Accordingly, the South Carolina Bankruptcy Court ordered that "[t]he case is remanded to the South Carolina Commission, where it may proceed to a conclusion." *Id.* at 4.

Request for Status Conference

AT&T South Carolina's Complaint requests, among other things, expedited consideration of Counts I and II (which do not seek monetary relief against Halo) and a status conference. *See* AT&T South Carolina's Complaint and Petition for Relief at 8-9. Halo's filings with the Texas and South Carolina Bankruptcy Courts prevented the Commission from considering these requests for months. Now that this Docket is back before the Commission where it belongs, AT&T South Carolina respectfully requests that the Hearing Officer convene a telephonic status conference with the parties as quickly as possible to establish a procedural schedule for this Docket.

Sincerely,



Patrick W. Turner

PWT/nml
Enclosures
cc: All Parties of Record
983057

ATTACHMENT A

Notice Recipients

District/Off: 0420–3 User: weathers Date Created: 12/1/2011
Case: 11–80162–dd Form ID: pdf01 Total: 2

Recipients of Notice of Electronic Filing:
aty Toby L. Gerber tgerber@fulbright.com

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):
The South Carolina Public Service Commission 101 Executive Center Drive Saluda Building Suite 100 Columbia, SC 29210

TOTAL: 1

ATTACHMENT B

EOD
10/26/2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	Chapter 11
	§	
Halo Wireless, Inc.,	§	Case No. 11-42464-btr-11
	§	
Debtor.	§	

ORDER GRANTING MOTION OF THE AT&T COMPANIES TO DETERMINE AUTOMATIC STAY INAPPLICABLE AND FOR RELIEF FROM THE AUTOMATIC STAY [DKT. NO. 13]

Upon consideration of the *Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and For Relief from the Automatic Stay* [Dkt. No. 13] (the "AT&T Motion")[1], and it appearing that proper notice of the AT&T Motion has been given to all necessary parties; and the Court, having considered the evidence and argument of counsel at the hearing on the AT&T Motion (the "Hearing"), and having made findings of fact and conclusions of law on the record of the Hearing which are incorporated herein for all purposes; it is therefore:

ORDERED that the AT&T Motion is GRANTED, but only as set forth hereinafter; and it is further

ORDERED that, pursuant to 11 U.S.C. §362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 (the "Automatic Stay") is not applicable to currently pending State Commission Proceedings[2], except as otherwise set forth herein; and it is further

ORDERED that, any regulatory proceedings in respect of the matters described in the AT&T Motion, including the State Commission Proceedings, may be advanced to a conclusion

[1] The Court contemporaneously is entering separate orders granting *The Texas and Missouri Companies' Motion to Determine Automatic Stay Inapplicable and in the Alternative, for Relief From Same* [Dkt. No. 31] and the *Motion to Determine the Automatic Stay is Not Applicable, or Alternatively, to Lift the Automatic Stay Without Waiver of 30-Day Hearing Requirement* [Dkt. No. 44] filed by TDS Telecommunications Corporation.

[2] All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

and a decision in respect of such regulatory matters may be rendered; *provided however*, that nothing herein shall permit, as part of such proceedings:

A. liquidation of the amount of any claim against the Debtor; or

B. any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor (collectively, the "Reserved Matters"); and it is further

ORDERED that nothing in this Order precludes the AT&T Companies[3] 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 State Commission Proceeding; and (ii) then determined that the Debtor has violated applicable law over which the particular state commission has jurisdiction; and it is further

ORDERED that the AT&T Companies, as well as the Debtor, may appear and be heard, as may be required by a state commission in order to address the issues presented in the State Commission Proceedings; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation and/or interpretation of this Order.

Signed on 10/26/2011

Brenda T. Rhoades SR

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE

[3] The AT&T Companies include Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; BellSouth Telecommunications, LLC d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee; Illinois Bell Telephone Company d/b/a AT&T Illinois; Indiana Bell Telephone Company Inc. d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company d/b/a AT&T Ohio; Wisconsin Bell Telephone, Inc. d/b/a AT&T Wisconsin; Pacific Bell Telephone Company d/b/a AT&T California; and Nevada Bell Telephone Company d/b/a AT&T Nevada.

ATTACHMENT C

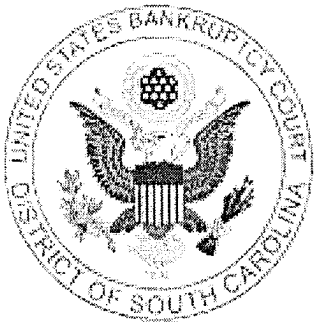
U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **N/A**
Adversary Proceeding Number: **11-80162-dd**

ORDER GRANTING MOTION TO REMAND

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

FILED BY THE COURT
11/30/2011



Entered: 12/01/2011

David R. Duncan
US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Bellsouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina, Plaintiff, v. Halo Wireless, Inc., Defendant.	C/A No. 11-80162-dd **ORDER GRANTING MOTION TO REMAND**

This matter is before the Court on a Motion for Remand ("Motion") filed by Bellsouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina ("Plaintiff") on November 7, 2011. An Objection to Plaintiff's Motion was filed on November 21, 2011 by Halo Wireless, Inc. ("Defendant"), and a Reply was filed by Plaintiff on November 28, 2011. The Court now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

In July 2011, Plaintiff filed state commission proceedings against Defendant in South Carolina and various other states, alleging violations of the parties' Interconnection Agreements ("ICAs"). Plaintiff claims primarily that Defendant disguised calls delivered by Plaintiff in order to avoid paying Plaintiff for such calls. On August 8, 2011, Defendant filed a chapter 11 bankruptcy petition in the Eastern District of Texas. Soon thereafter, Defendant attempted to remove the various state commission proceedings, including the proceeding pending in South Carolina, to federal courts in several different states. Judge Rhoades, the bankruptcy judge presiding over Defendant's chapter 11 case, found that the automatic stay did not apply to the state commission proceedings and ordered that such proceedings continue to a conclusion. On November 3, 2011, Judge Campbell, United States District Court Judge for the Middle District

of Tennessee, granted a Motion to Remand filed by Plaintiff in the Tennessee action, remanding the proceeding back to the Tennessee Regulatory Authority.

In this instant proceeding, Plaintiff argues that the proceeding should be remanded to the Public Service Commission of South Carolina ("South Carolina PSC") because the Court lacks jurisdiction over the proceeding. Plaintiff first argues that removal is substantively improper because the proceeding is an administrative proceeding and not a "civil action". Additionally, Plaintiff argues that the South Carolina PSC has exclusive jurisdiction to decide ICA disputes; only after the state commission makes a decision, Plaintiff argues, does the federal court have jurisdiction to review the PSC's decision. Plaintiff further argues that even if the federal court has jurisdiction, the South Carolina PSC has primary jurisdiction, and that this Court should defer to the PSC to decide this issue. Finally, Plaintiff argues that removal to this Court was not proper because the proceeding should have been removed to the District Court, and if the District Court sought to transfer the proceeding to the bankruptcy court after removal to the District Court, such transfer would be improper because the bankruptcy court has no jurisdiction over the issues raised. Defendant responds at length that this proceeding in fact meets the definition of a "civil action", that the South Carolina PSC lacks jurisdiction over the proceeding due to the federal law issues involved, and that therefore remand to the South Carolina PSC is inappropriate.

CONCLUSIONS OF LAW

This action, just like the action addressed in Judge Campbell's order, was removed to this Court prior to any adjudication by the South Carolina PSC. Thus, there is no decision or interpretation for this Court, or any other bankruptcy or district court, to review. *See Concord Telephone Exchange, Inc. v. Halo Wireless*, No. 3-11-0796 (M.D. Tenn. Nov. 3, 2011) ("Federal

district courts have jurisdiction to review certain types of decisions by state commissions, and the Telecommunications Act of 1996 . . . provides for judicial review of certain types of determinations by state commissions. . . . Here, however, as noted above, there is no state commission determination to review.") (citing *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475,480 (5th Cir. 2000); 47 U.S.C. § 252(e)(6)). The South Carolina PSC is primarily responsible for enacting and overseeing rates, regulations, terms, and conditions relating to telecommunication service providers and their ICAs. *See* 47 U.S.C. § 252(e); S.C. Code § 58-9-10 et seq. As a result, the South Carolina PSC has jurisdiction over the claims presently before the Court, and it is in the best position, with expertise in such matters, to decide this dispute relating to the parties' ICA. *See id.* This Court agrees with the reasoning behind Judge Campbell's decision to remand the Tennessee action to the Tennessee Regulatory Authority, and finds the same should be done here. The remaining arguments presented by the parties do not have to be addressed, as the Court has found that remand is appropriate for the reasons stated above. Plaintiff's Motion to Remand is granted. The case is remanded to the South Carolina Public Service Commission.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Remand is granted. The case is remanded to the South Carolina Public Service Commission, where it may proceed to a conclusion.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA	)	
	)	CERTIFICATE OF SERVICE
COUNTY OF RICHLAND	)	

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, LLC d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Letter dated December 6, 2011 to be served upon the following on December 6, 2011:

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Jocelyn G. Boyd, Esquire
Deputy Clerk
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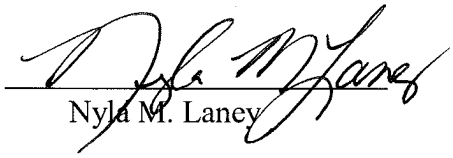
(PSC Staff)
(Electronic Mail)



Nyla M. Laney

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