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COUNSEL FOR THE DEBTOR

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

IN RE: CASE NO. 11-42464-btr-11
HALO WIRELESS, INC., CHAPTER 11
DEBTOR.

EMERGENCY MOTION FOR SECTION 105 STATUS CONFERENCE
IN ORDER TO ESTABLISH
PROCEDURES FOR CONVERSION TO CHAPTER 7

Halo Wireless, Inc. ("Halo" or the "Debtor") hereby files this, its *Emergency Motion For Section 105 Status Conference In Order To Establish Procedures For Conversion To Chapter 7* (the "Motion"). Halo's efforts to meet the requirements set forth in this Court's order dated June 26, 2012 (the "Conversion Denial Order") have proven unsuccessful. Halo therefore requests that this Court hold an expedited status conference pursuant to Section 105(d) of the Bankruptcy Code and establish the procedures set forth *infra* for the orderly shutdown of the Debtor's

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telecommunications network and the conversion of the Debtor's ongoing day-to-day operations from Chapter 11 to Chapter 7, and for such relief would show as follows:

I. Background

A. The Bankruptcy Case

1. Halo is a telecommunication company that provides wireless voice and data services to its customers pursuant to its Radio Station Authorization ("RSA"), a nationwide license which was granted by the Federal Communications Commission (the "FCC") that permits Halo to register and operate fixed base stations in the 3650-3700 MHz band and to support mobile, portable and fixed subscriber stations throughout the domestic United States.

2. Halo is a Commercial Mobile Radio Service ("CMRS") provider and the wireless telecommunications traffic that it facilitates is known as CMRS traffic.

3. Pursuant to the rights afforded by its RSA and its status as a CMRS provider, Halo entered into interconnection agreements ("ICAs") with the AT&T Companies¹ under which the AT&T Companies are required to accept Halo's CMRS traffic, and Halo is required to pay the AT&T Companies reciprocal compensation (not access) based on the amount of CMRS traffic it sends to the AT&T Companies.

4. On August 25, 2011, the AT&T Companies filed a motion [Dkt. No. 13] asking the Court to hold that certain private party actions (the "PUC Actions") filed by them against Halo before the public service and public utility commissions (generically, "PUCs") of several

¹ 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

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states (including one action² (the "Tennessee Action"), before the Tennessee Regulatory Authority (the "TRA")) were excepted from the automatic stay pursuant to Section 362(b)(4) of the United States Bankruptcy Code³, or, in the alternative, to modify the stay pursuant to Code § 362(d)(1) to permit those actions to go forward. Two other similar motions were filed by other contingent creditors (collectively, the "Stay Motions").

5. The Court held a hearing on the Stay Motions and ruled that the PUC Actions were excepted from the stay pursuant to Code § 362(b)(4). On October 26, 2011, the Court entered orders granting the Stay Motions [Dkt. No. 159, 160, and 161] (the "Stay Orders"). The Stay Orders provide that the PUC Actions could be advanced to conclusion provided however, that nothing in the Stay Orders permitted "liquidation of the amount of any claim against the Debtor."

6. After entry of the Stay Orders, the TRA considered the merits of the Tennessee Action, and entered an order on January 26, 2012, interpreting federal law over which it does not have jurisdiction, and holding that access rather than reciprocal compensation applied. *The TRA did not find that Halo was in violation of any state law or regulation.* Further, the TRA did not enter judgment for a sum certain.

7. On April 27, 2012, the AT&T Companies filed their *Motion Pursuant To Section 1112(b) Of The Bankruptcy Code And Local Bankruptcy Rules 1017 And 9014 To Convert Case To A Case Under Chapter 7 Of The Bankruptcy Code* (the "Conversion Motion"). Subsequently, a number of other contingent creditors joined in that Conversion Motion. On June 15, 2012, the parties appeared before the Court and presented evidence and argument on the

² Docket No. 11-00119, BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.

³ 11 U.S.C. §§ 101 *et seq.* (the "Code").
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Conversion Motion. The Court ruled from the bench that the Conversion Motion would be denied, and that ruling was later formalized in the Conversion Denial Order.

8. But in the Court's ruling from the bench, and in the Conversion Denial Order, the Court instructed Halo to prepare and file an amended plan of reorganization that provided for disposition of claims related to the access charges and facilities charges claimed by the telephone companies. The Court required that Halo file such a plan no later than July 26, 2012, and include in the plan specific information about the availability of capital for funding the plan. If Halo failed to file a confirmable plan meeting such requirements by July 26, 2012, the Court made clear that it would convert Halo to Chapter 7 on or after August 1, 2012.

9. Both before and after the Court's Conversion Denial Order, Halo was communicating with contingent creditors, potential funding sources, and others for purposes of developing a confirmable plan of reorganization. Recently, discussions with one of the primary contingent creditors reached a point where Halo now believes a settlement agreement is not possible. Without such an agreement from major creditors, Halo believes it is not possible to develop a confirmable plan of reorganization by the Court's deadline. With the prospect of conversion looming and with no remaining viable avenues for submitting a plan that meets the Court's directive, Halo believes that the procedures set forth below are necessary to the orderly transition this case to a Chapter 7, to avoid further legal expense and to protect all parties in interest.

I. The State Commission Cases

10. The primary remedies sought by the contingent creditors in all of the pending state commission cases are (a) cessation of traffic, and (b) a determination that Halo is liable for the payment of access charges and facilities charges. Pursuant to prior orders of this Court, the

state commissions are not permitted to liquidate any amounts owed by Halo, but rather only to determine whether Halo is liable. Although there has been no attempt by any forum to quantify the amounts, if any, that should be allowed as claims, the dollar amounts for the access charges and facilities charges claimed by the contingent creditors in those actions far exceed Halo's assets by many orders of magnitude. Halo continues to believe that it is not liable for access and facilities charges in any amount. Based on the Court's required assumption of liability for plan and disclosure statement purposes, however, the process of proving and quantifying liability would take an excessive amount of time and consume considerable expense, with no obvious benefit to the Debtor or its creditors. Further, if one assumes Halo is liable for some amount, it would be pointless to litigate whether the "correct" amount is one-half or three-quarters of what the claimants assert is due, since Halo has no means to fund a plan that would address even these amounts.

11. More important, it now appears unfeasible for Halo to propose a plan of reorganization that would allow it to operate far enough into the future to establish its non-liability, or attempt to show that if there is liability the proper amount is within a range of what Halo could amass for purposes of a plan. In that granting this Motion would result in the orderly cessation of traffic, it would be a waste of resources, both for Halo and for the contingent creditors, to continue pursuing the state commission cases during the process of conversion. In the immediate future, Halo is scheduled for final hearings in Kentucky (July 18-19), Mississippi (August 2), and North Carolina (August 7-8). These final hearing dates do not include all of the discovery, testimony preparation, and other activities relating to those and other upcoming hearings, all of which will cause considerable, and unnecessary, expense both for Halo and the contingent creditors.

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12. Moreover, Halo and the contingent creditors currently face a number of deadlines relating to responses or hearings on administrative claims, objections to claims, motions to withdraw the reference, the currently scheduled hearing on July 30, discovery relating to the Debtor's plan, and other matters relating to administration of the Chapter 11 case (collectively, "Chapter 11 Administrative Matters"). It makes no sense for the Debtor or the creditors to be burdened with expenses relating to Chapter 11 Administrative Matters while this matter is transitioning to Chapter 7.

13. Halo therefore requests that at the status conference the Court enter an order abating the state commission cases until such time as the Chapter 7 trustee has had an opportunity to investigate the cases and make a determination as to whether the Chapter 7 estate should continue pursuing its defense in those actions. Moreover, if authorized at the status conference, Halo will seek abatement of its appeals to the Fifth Circuit, the Tenth Circuit, and the courts of Tennessee to avoid further expense in those proceedings as well, until the Trustee can determine whether those appeals should be continued or dismissed. Finally, Halo requests that the Court's order abate the Chapter 11 Administrative Matters as well pending review by the Chapter 7 trustee.

II. Required Notices Prior To Termination Of Traffic And Service Expenses.

14. As a provider of telecommunications services, Halo is subject to federal telecommunications laws and regulations governing discontinuation of service to its customers (including beta broadband customers), as well as contractual obligations to its high-volume customer and many of its underlying service vendors that require a minimum of thirty days' notice of termination of service. Such rules are set forth in 47 C.F.R. Sec. 63.71, and are summarized at the FCC's web page discussing "Discontinuance of Telecommunications Service

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> What Companies and Bankruptcy Professionals Must Do" located at http://transition.fcc.gov/wcb/cpd/other_adjud/business214.html. By way of brief summary, under the FCC's rules:

- Halo is required to give at least 30 days' written notice (that contains particular information) to all of its customers advising them that Halo intends to discontinue services. Halo has one High Volume customer, but also provides a "Low Volume" or retail service to approximately 30 customers in 6 states. Both offerings include the provision of telecommunications service, so the FCC requirements apply to both and to all such customers.
- On or after the date of customer notice, Halo must file an application with the FCC.
- The FCC asserts that prior to submission of the application, applicants must pay any and all debts owed to the FCC. Since Halo has filed for bankruptcy protection, it must notify the Office of Managing Director in writing. The FCC will not release a Public Notice on the discontinuance application if Halo is "red-lighted" in the FCC's system (e.g. Halo is deemed to owe the FCC money).
- On or before the date Halo sends the application to the FCC, Halo must also notify and submit a copy of the application to the Secretary of Defense, each state PUC and the governors of the states in which service will be affected.
- The FCC will (after it verifies no amounts are owed, or after payment of those amounts) issue a public notice triggering the start of a public comment period.
- The FCC can allow the application to be automatically granted on the 31st day after release of the public notice, unless the FCC decides for some reason not to allow the application to be automatically granted.

15. Halo has already drafted the required customer notice and FCC application, and will send them at such time as the Court approves these procedures.

16. Regarding the actual cessation of service, the scope of Halo's network requires that the traffic cease in a two-phase process to avoid unnecessary expense to the estate. To disconnect its trunks, Halo must submit an order with the AT&T Companies requesting disconnection. The AT&T Companies must then provide Halo with a document called a Disconnect Firm Order Commitment (a "DFOC") establishing the specific date on which the disconnection will take place. As part of the termination of all of Halo's trunks, the AT&T

Companies will need to issue more than 120 DFOCs, which is a large and unusual volume of disconnect orders that, in Halo's experience, almost certainly will overwhelm the AT&T Companies' order processing staff and cause delays in the disconnection process *unless* the AT&T Companies take some action to either supplement and/or concentrate resources on processing these DFOC orders so that they are completed in a reasonable timeframe.

17. This timeframe is critical because Halo requires these DFOCs in order to disconnect the long-haul facilities to the AT&T Companies' tandem, a set of facilities that in the most recent month cost the Debtor nearly \$130,000. Thus time is of the essence to disconnect these facilities in order to minimize future expense outlays. It is important to note that Halo's underlying long haul providers *will not process disconnection orders submitted by Halo or its underlying service provider until they receive the DFOC issued by the AT&T Companies*. Furthermore, the Debtor estimates that it will take at least seven days after issuance of the relevant DFOC to complete the disconnect order process with any of Halo's underlying service providers. These service providers will continue to charge Halo for these facilities prior to the completion of these steps.

18. Halo also has connections that go to each of its base station locations. These connections are also important because they are one of the means by which Halo's Low Volume retail customers' obtain wireless broadband Internet access, and their voice capabilities also rely on these connections. Halo's High Volume customer's traffic also traverses these connections. Therefore these connections cannot be taken down until regulatory approval is secured. Halo notes that there is more flexibility on scheduling for these connections because they are not dependent on the AT&T Companies' service order processing. However, the 30 day contractual advance notice of disconnection noted above does apply in these instances.

19. Halo therefore requests that at the status conference, the Court enter an order establishing the following procedure. The timeline below assumes that the FCC discontinuance process takes only the ordinary 31 days, and that the FCC does not, for whatever reason (including but not limited to "red light" status), delay the comment cycle for an extended period:

- A. Halo will deliver the required notices to customers and the FCC within 24 hours after the issuance of the Court's order establishing these protocols. For purposes of these procedures, the date on which the FCC issues the Public Notice is day 1. Halo will deliver its requests to AT&T to issue the DFOCs for all Halo circuits within 72 hours of the Court's order.
- B. All DFOCs issued by AT&T during the time period from its receipt of Halo's disconnect orders (1-3 days from Court order) through day 23 will be delivered by Halo to the relevant providers in sufficient time to disconnect such circuits on day 30, and all traffic in such markets will cease on day 30 (and not before). Where AT&T is able to issue the required DFOCs within the first 23 days, long haul facilities, tandem trunks, and the traffic carried over these circuits will cease on day 30.
- C. To the extent AT&T issues any DFOCs after day 23, traffic will not cease on the relevant circuits until 7 days after issuance of the DFOC to permit Halo sufficient time to deliver the DFOC to the relevant providers and obtain disconnection of their circuits.

WHEREFORE, Halo respectfully requests that the Court schedule an expedited status conference in this case and at that conference enter an order granting this Motion, abating all state commission cases, establishing the procedures set forth in this Motion, and granting Halo

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such other and further relief, general or special, at law or in equity, to which Halo may show itself justly entitled.

DATED this 13th day of July, 2012.

Respectfully submitted,

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