

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.,	§	
	§	
DEBTOR.	§	
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HALO WIRELESS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. _____
	§	
BELLSOUTH	§	
TELECOMMUNICATIONS, LLC	§	
DBA AT&T TENNESSEE,	§	
	§	
Defendant.	§	

**PLAINTIFF'S ORIGINAL COMPLAINT FOR EMERGENCY  
INJUNCTIVE RELIEF AND TO HOLD DEFENDANT IN CONTEMPT FOR  
VIOLATION OF THIS COURT'S ORDER DATED OCTOBER 26, 2011**

HALO WIRELESS, INC. ("Halo" or "Debtor"), Debtor-in-possession in the above-styled bankruptcy proceeding, hereby files its Plaintiff's Original Complaint for Emergency Injunctive Relief and to Hold Defendant in Contempt for Violation of this Court's Order Dated October 26, 2011 (the "Complaint"), seeking emergency mandatory injunctive relief and an order of contempt against BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T" or "Defendant").

**I. PARTIES**

1. Halo Wireless, Inc. ("Halo" or "Debtor") is a Texas corporation with its principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220.

2. BellSouth Telecommunications, LLC, a Georgia limited liability company, does business in Tennessee as AT&T Tennessee. AT&T's address in Tennessee is 333 Commerce Street, Suite 2101, Nashville, Tennessee 37210. AT&T may be served with process by serving its registered agent, CT Corporation System, at 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710, or as otherwise allowed by Federal Rule of Bankruptcy Procedure 7004, *et seq.* A copy of this complaint is being forwarded to AT&T's counsel in the bankruptcy case *via* email in order to inform AT&T that Halo is seeking mandatory restraining/injunctive relief for the reasons stated herein.

## **II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over the instant adversary proceeding pursuant to 28 U.S.C. § 1334 because the instant adversary proceeding arises in, arises under or is related to a case under title 11. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

4. Venue is proper in this Court as to all Defendants pursuant to 28 U.S.C. § 1409.

## **III. PRELIMINARY STATEMENT**

5. By its Order Granting Motion Of The AT&T Companies To Determine Automatic Stay Inapplicable And For Relief From the Automatic Stay dated October 26, 2011 (the "Stay Order"), this Court ordered that the state commission proceedings involving AT&T and Halo could be advanced to *a conclusion and a decision* in respect to such regulatory matters be rendered; "*provided however*, that nothing herein shall permit, as part of such proceedings . . . any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor." Moreover, in the Stay Order, the Court defined those reserved items as "Reserved Matters" and further stated that "nothing in this Order precludes the AT&T

Companies 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..." Stay Order, p. 2. It is clear, even though the Debtor disagrees with the premise or basis for the Stay Order's entry, that the Stay Order was crafted to be extremely limited in scope and that there was no lifting or modification of the automatic stay to be implied beyond the state commission determining if it had jurisdiction to determine that the Debtor had violated applicable law over which that state commission is asserted to have jurisdiction and to actually determine whether there had been a violation of such law.

6. On Monday, January 23, 2012, in the proceeding before the Tennessee Regulatory Authority (the "TRA"), which was commenced by AT&T against Halo (the "TRA Proceeding"), the TRA *deliberated* on the merits of the previously-held final hearing between Halo and AT&T, and the TRA Directors unanimously passed a motion to enter judgment in favor of AT&T, including an authorization for AT&T to terminate "service" to Halo. *Less than three hours later*, without seeking approval from this Court, and in total disregard for the requirements as to the Reserved Matters to come back to this Court to proceed, AT&T turned off all Halo trunks in the State of Tennessee. AT&T's conduct was in direct and flagrant violation of the Stay Order. As a result, Halo seeks (a) a mandatory temporary restraining order from this Court ordering AT&T to resume interconnection immediately; (b) a mandatory preliminary injunction from this Court requiring AT&T to maintain such interconnection until an appeal from the TRA Proceeding to the United States District Court, as provided in 47 U.S.C. § 251(e)(6), has been completed or an appropriate order issues from this Court which takes into account all necessary prerequisites for

AT&T to so act; and (c) an order from this Court holding AT&T in contempt for its intentional violation of the Court's Stay Order and awarding Halo damages for such contempt.

#### **IV. FACTUAL AND PROCEDURAL BACKGROUND**

7. On July 26, 2011, AT&T filed its Complaint at the TRA, alleging breach of the interconnection agreement (the "ICA"), an executory contract, and seeking an order allowing AT&T to terminate the ICA. AT&T's Complaint in Tennessee virtually mirrored complaints filed by other AT&T entities in a number of other states. After Halo filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 8, 2011, Halo filed a Suggestion of Bankruptcy with the TRA on August 10, 2011. Then, to avoid numerous state commission proceedings or federal court actions addressing the same issues in multiple venues, on August 17, 2011, Halo removed the TRA proceeding (and all of the other pending state commission proceedings) to federal court.

8. On August 25, 2011, AT&T and several of its subsidiaries filed a motion for relief from stay by which it asked the Court to lift the automatic stay provided by section 362 of the United States Bankruptcy Code<sup>1</sup> to allow certain actions commenced by AT&T against Halo, including the TRA Proceeding, that were pending before the state commissions of ten states to go forward or, alternatively, to determine that the automatic stay was inapplicable to those actions pursuant to the police and regulatory actions exception to the automatic stay provided by section 362(b)(4) of the Code.

9. On October 7, 2011, this Court issued an oral ruling in which it held that the police and regulatory exception to the automatic stay provided by section 362(b)(4) of the Code applied to the TRA Proceeding (and the other actions described in AT&T's motion to lift stay)

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<sup>1</sup> 11 U.S.C. §§ 101 *et seq.* (the "Code").

on account of the regulatory nature of the pre-petition actions commenced by AT&T before the state commissions. Subsequently, on October 26, 2011, the Court entered the Stay Order which set forth the ground rules.

10. Shortly after the entry of the Court's Stay Order, on November 1, 2011, the United States District Court for the Middle District of Tennessee remanded the proceeding to the TRA. Within a week, AT&T submitted a letter to the TRA requesting to be placed on the November Agenda in order to set a schedule and proceed toward a hearing on the merits. And proceed they did. Within the span of about two months, including the Thanksgiving, Christmas, and New Years holidays, the parties briefed a motion to abate and a motion to dismiss, the parties each prepared and pre-filed direct and rebuttal testimony for two witnesses, the parties prepared pre-hearing memoranda, and the parties prepared for and appeared at a hearing on the merits.

11. The TRA held a hearing on the merits on January 17, 2012. A true and correct copy of the transcript is attached as Exhibit A-1 to the Affidavit of Steven H. Thomas, which is also attached as Exhibit A. At the hearing, the TRA made it known that, "we are not sitting here to be used so you can go on some appeal." Exhibit A-1, p. 80, lines 17-18. Though significant and complicated legal issues are involved in the dispute between AT&T and Halo, the TRA refused to allow post-hearing briefing. Exhibit A, p. 11-12.

12. On January 23, 2012, the TRA held an open session in which the directors deliberated and orally voted on the merits of the TRA Proceeding.<sup>2</sup> A true and correct copy of

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<sup>2</sup> Nevertheless, as the Tennessee Code Annotated demonstrates, the TRA has not yet rendered a final decision. Tenn. Code Ann. § 65-2-112 ("final decision" must include "findings of fact" and "conclusions of law" and be set forth in writing for delivery to the parties). The TRA has not "ordered" anything, and so AT&T's actions taken in reliance on the announcement at the TRA Proceeding, even assuming it was permissible for the TRA to make

the transcript is attached as Exhibit A-2 to the Affidavit of Steven H. Thomas. "Deliberation" amounted to nothing more than a motion, made orally by TRA Director Sara Kyle, urging the TRA to give AT&T the relief sought, including authorization to terminate its underlying contracts with Halo. The motion was passed unanimously by the three TRA Directors. No findings of fact or conclusions of law were made, discussed or issued. Director Kyle did note for the record, however, that "this type of access charge avoidance behavior is not reflective of the many carriers that follow the rules and *abide by contracts they enter into*," which clearly demonstrates that the TRA's decision was based on breach of contract, and not violation of state law. Exhibit A-2, p. 17, line 9-12 (emphasis added).

13. After the open session, at 3:13pm, Halo technicians were alerted by an internal alarm system that its "trunk groups," for provision of network access (to its customers and via its ICA with AT&T), in Tennessee had been switched off. Affidavit of Russell Wiseman, p. 2, attached as Exhibit B. AT&T provided absolutely no notice that the trunk groups would be taken out of service. Affidavit of Russell Wiseman, pg. 2. Halo's technicians then received confirmation, after contacting their colleagues at AT&T, that Halo's Trunk Groups in Nashville, Memphis, Knoxville, and Chattanooga, Tennessee had been "turned down." *Id.*

14. At the same time, AT&T filed a Notice of Decision, informing the Court that the TRA had ruled "that AT&T may discontinue service to Halo in the State of Tennessee" and that based on that ruling "notice is hereby given that AT&T Tennessee is discontinuing service to Halo in the State of Tennessee." Notice of Decision, at p. 2. Later conversations with AT&T

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determination beyond the scope of what was allowed per the terms of the Stay Order (which action and remedies detailed were not), are not authorized in the first instance.

counsel confirmed that AT&T had deliberately turned off or deleted Halo's "trunk groups" in Tennessee. Affidavit of Russell Wiseman, pg. 3.

## V. CAUSES OF ACTION

### *COUNT 1- Injunction*

15. AT&T disconnected interconnection with Halo merely on the basis of *deliberations* by the TRA, before the TRA even entered an order. Presumably, AT&T believes that such actions are within the permissible actions allowed by the Stay Order;<sup>3</sup> such presumption is simply wrong, as the Stay Order explicitly defines exactly what actions AT&T and the TRA may take. The Stay Order states that "any regulatory proceedings in respect of the matters described in the AT&T Motion, including the State Commission Proceedings [which include the TRA Proceeding], may be advanced to a conclusion 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")..."

Stay Order, pp. 1-2 (emphasis in original).

16. The Stay Order then provides a mechanism for AT&T and the TRA to address the Reserved Matters; AT&T is entitled to file a motion for relief from stay "to pursue the Reserved Matters once a state commission has (i) first determined that it has jurisdiction over the issues

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<sup>3</sup> AT&T has continually maintained that since section 362(b)(4) applies (Halo disagrees), there is no functional jurisdiction which the Court can maintain. AT&T's actions, despite the Stay Order's clear admonition, shows that AT&T does not accept that this Court has any jurisdiction over these issues whatsoever.

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..." Stay Order, p. 2.

17. AT&T did not abide by the Court's Stay Order because it took an action that "affects the debtor-creditor relationship" without first securing further authority from this Court. AT&T's disconnection of interconnection with Halo could (a) give rise to a claim by Halo for breach of contract when section 365 of the Code required AT&T to comply with the terms of the ICA; and (b) affect the debtor-creditor relationship between Halo and Transcom Enhanced Services, Inc. ("Transcom") because Transcom is both a customer of and vendor to Halo with indemnity rights flowing between them. In either of these cases, AT&T's disconnection of interconnection clearly "affects the debtor-creditor relationship" between Halo and its creditors. Moreover, on a more elemental level, shutting down access to the trunk groups was not an action which this Court authorized to be taken by the Stay Order. The Court did not cede authority over property of this Debtor's estate (contract rights) to multiple state commissions.

18. Pursuant to the Stay Order, once the TRA ruled that Halo "violated state law,"<sup>4</sup> AT&T's recourse was to file a motion with the Court to request that the Court require Halo to assume or reject the ICA; if rejected, AT&T could have terminated interconnection without further authority. One of the automatic stay's purposes is to protect debtors from unilateral and unauthorized self-help by counter parties to executory contracts. Because AT&T did not proceed consistent with this Court's explicit order, AT&T's self-help is a blatant violation of the Court's

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<sup>4</sup> Halo notes that the TRA's oral deliberation makes plain that it did not address whether Halo "violated state law." Instead the TRA held that Halo had breached the ICA. This is no minor distinction. Halo's rights under section 365 of the Bankruptcy Code to provide for a cure or to take other options available under the ICA or to reject, which rights are assessed and determined by this Court by way of its core jurisdiction, were affected despite this Court's limitation on what the TRA could and could not do as set forth in the Stay Order. The Stay Order was not for the purpose of providing AT&T with the ability to utilize contractual or quasi-contractual remedies and then implement them, as those remedies are affected and altered by virtue of section 365 until appropriate orders of this Court allow otherwise. The ICA was not ruled to be illegal or improper, just breached.



Stay Order. Not even operating under the color of the TRA's oral vote that had not yet been reduced to an order, AT&T has disregarded the requirements of the Stay Order and has blithely bypassed the requirements of section 365 of the Code, which requires that AT&T comply with the ICA until AT&T is released from it (assuming that is the Debtor's determination).

19. As noted, AT&T's unilateral termination of interconnection with Halo not only violates the Court's Stay Order, but also violates the provisions of the Code that provide for treatment of executory contracts. Section 365 of the Code prescribes the mechanisms for treatment of executory contracts during a bankruptcy. Pursuant to section 365(a) of the Code, and with limited exceptions that are not applicable here, a debtor may choose to assume or reject any executory contract to which it is a party. A non-debtor counter party to an executory contract must honor the contract unless and until it is rejected by a debtor. *See, e.g., In re Public Service Co. of New Hampshire*, 884 F.2d 11, 14-15 (1st Cir. 1989) ("In the meantime [before an executory contract is rejected], the executory contract remains in effect and creditors are bound to honor it."); *In re Pittsburgh-Canfield Corp.*, 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002) ("During the post-petition and pre-acceptance period, an executory contract remains in existence and is enforceable by, but not against the debtor-in-possession."). While there is no time period in which a Debtor must choose to assume or reject its executory contracts, pursuant to section 365(d)(2) of the Code, a non-debtor counterparty to an executory contract may ask the bankruptcy court to set a deadline for a debtor to assume or reject executory contracts.

20. At any time since the case was filed (including before the TRA ruled), AT&T could have asked the Court to set a deadline, pursuant to section 365(d)(2) of the Code, for Halo to assume or reject the ICA. AT&T could have presented the TRA's ruling to the Court in the

context of a motion to compel Halo to assume or reject and could have presented the TRA's ruling as evidence that Halo should not be allowed to assume the ICA.

21. AT&T did not ask the Court to set a deadline for Halo to assume or reject the ICA. Instead, AT&T unilaterally disconnected its interconnection with Halo. AT&T's action amounts to a direct violation of the requirements of the Code. Such violation entitles Halo to (a) a mandatory temporary restraining order from this Court ordering AT&T to resume interconnection immediately; and (b) a mandatory preliminary injunction from this Court requiring AT&T to maintain such interconnection until an appeal from the TRA Proceeding to the United States District Court, as provided in 47 U.S.C. § 251(e)(6), has been completed or an appropriate order issues from this Court which takes into account all necessary prerequisites for AT&T to so act.

***COUNT 2- Contempt***

22. As described above, AT&T intentionally and flagrantly violated the Court's Stay Order by shutting down the Halo trunk groups in Tennessee without first returning to the Court, as explicitly required under the Stay Order. During this case, AT&T has consistently maintained that this Court simply does not have jurisdiction over any of the issues relating to the TRA Proceeding because such action is exempt from the automatic stay pursuant to section 362(b)(4) of the Code (Halo vehemently disagrees, even if the TRA Proceeding itself were exempt from the stay, the Court still has jurisdiction over the ICA), and that it filed a motion with the Court out of "caution and respect." Now, AT&T has brushed aside caution in regard to the process of assumption and rejection of executory contracts and dispensed with respect to the Court, and has

simply taken the position that it can do what it wants, despite the limitations provided by the Court in the Stay Order.<sup>5</sup>

23. AT&T's intentional and flagrant violation of this Court's order shows the utmost lack of caution and total disrespect for this Court and its jurisdiction and threatens the very viability of the Debtor. Because AT&T intentionally and flagrantly violated this Court's Stay Order, ignored the requirements of the Code, and endangered the viability of the Debtor, this Court should hold AT&T in contempt and should award damages to the Debtor.

## VI.

### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Halo prays that the Court grant the following relief:

- A. A mandatory temporary restraining order ordering AT&T to resume interconnection immediately for its intentional violation of the Stay Order and for violation of section 362(a) of the Code for taking contractual, self-help remedies without authorization of the Court with regard to an executory contract;
- B. A mandatory preliminary injunction (for the same reasons stated above) requiring AT&T to maintain interconnection until an appeal from the TRA Proceeding to the United States District Court, as provided in 47 U.S.C. § 251(e)(6), has been completed or an appropriate order issues from this Court which takes into account all necessary prerequisites for AT&T to so act;

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<sup>5</sup> Response of the AT&T Companies in Opposition to Motion for Stay Pending Appeal of AT&T Order (filed in the Bankruptcy Court), ¶ 24; Response of the AT&T Companies in Opposition to Emergency Motion for Stay Pending Appeal of AT&T Order (filed in the District Court), ¶ 26 (both stating, "The AT&T Companies (and, on information and belief, all other movants) filed the Stay Exception Motions out of an abundance of caution and respect for the Court.")

- C. An order holding AT&T in contempt for its intentional violation of the Stay Order;
- D. An award of damages from AT&T for its intentional violation of the Stay Order;
- E. An award of costs of court; and
- F. Such other and further relief, general or special, at law or in equity, to which Halo may show itself justly entitled.

Respectfully submitted,

/s/ Steven H. Thomas (01-26-12)

**McGUIRE, CRADDOCK  
& STROTHER, P.C.**

Steven H. Thomas (SBN 19868890)  
Troy P. Majoue (SBN 24067738)  
Jennifer M. Larson (SBN 24071167)  
2501 N. Harwood, Suite 1800  
Dallas TX 75201  
Phone: 214.954.6800  
Fax: 214.954.6850  
Email: [sthomas@mcsclaw.com](mailto:sthomas@mcsclaw.com)  
Email: [tmajoue@mcsclaw.com](mailto:tmajoue@mcsclaw.com)  
Email: [jl Larson@mcsclaw.com](mailto:jl Larson@mcsclaw.com)

**WRIGHT GINSBERG BRUSILOW P.C.**

E. P. Keiffer (SBN 11181700)  
Kim E. Moses (SBN 24035872)  
Shane Lynch (SBN 24065656)  
325 N. St. Paul Street, Suite 4150  
Dallas, Texas 75201  
Telephone: (214) 651-6500  
Facsimile: (214) 744-2615  
Email: [pkeiffer@wgblawfirm.com](mailto:pkeiffer@wgblawfirm.com)  
Email: [kmoses@wgblawfirm.com](mailto:kmoses@wgblawfirm.com)  
Email: [slynch@wgblawfirm.com](mailto:slynch@wgblawfirm.com)

*Attorneys for Plaintiff,  
Halo Wireless, Inc.*