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November 10, 2011

Dr. Kenneth C. Hill, Chairman  
Tennessee Regulatory Authority  
c/o Sharla Dillon, Docket & Records Manager  
460 James Robertson Parkway  
Nashville, TN 37243

**RE: Complaint of TDS Telecom, et. al. v. Halo Wireless, Inc., et. al.**  
**Docket No. 11-00108**

Dear Chairman Hill:

This letter is notification that this matter may now be considered by the Tennessee Regulatory Authority (TRA) because of rulings by the United States District Court for the Middle District of Tennessee ("District Court") and the United States Bankruptcy Court for the Eastern District of Texas ("Bankruptcy Court"). The U. S. District Order and Memorandum Opinion (both attached) remand the case to the TRA. The Bankruptcy Court Order (attached) holds that the automatic stay pursuant to 11 U.S.C. §362(b)(4) is not applicable to this TRA proceeding. Also attached is the Bankruptcy Court's Order Denying Halo Wireless, Inc.'s Motions for Stay Pending Appeal.

Complainants respectively request that this matter be placed on the Agenda for the November 21, 2011 Directors Conference for appointing a Hearing Officer and other action as necessary.

Complainants further respectively request an expedited hearing and propose the following procedural schedule:

Thursday, December 8, 2011- Direct Testimony filed

Thursday, December 15, 2011- Rebuttal Testimony filed

Thursday, December 22, 2011- Surrebuttal testimony filed

Monday, January 9, 2011- Hearing

Sincerely,



H. LaDon Baltimore  
Norman J. Kennard  
Attorneys for Petitioners

cc: Paul S. Davidson Steven H. Thomas  
James M. Weaver Troy P. Majoue  
W. Scott McCollough Jennifer M. Larson

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION


CONCORD TELEPHONE EXCHANGE, INC.,	)
et al.	)
	) NO. 3-11-0796
v.	) JUDGE CAMPBELL
	)
HALO WIRELESS, INC., et al.	)

ORDER

Pending before the Court are Defendant Halo Wireless, Inc.'s Motion to Transfer (Docket No. 6) and Plaintiffs' Motion for Remand (Docket No. 9). For the reasons stated in the accompanying Memorandum, Defendant's Motion to Transfer is DENIED, and Plaintiffs' Motion to Remand is GRANTED.

This action is remanded to the Tennessee Regulatory Authority, and the Clerk is directed to close the file.

IT IS SO ORDERED.

  
\_\_\_\_\_  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CONCORD TELEPHONE EXCHANGE, INC.,     )  
et al.     )  
  ) NO. 3-11-0796  
v.     ) JUDGE CAMPBELL  
  )  
HALO WIRELESS, INC., et al.     )

MEMORANDUM

Pending before the Court are Defendant Halo Wireless, Inc.'s Motion to Transfer (Docket No. 6) and Plaintiffs' Motion for Remand (Docket No. 9). For the reasons stated herein, Defendant's Motion to Transfer is DENIED, and Plaintiffs' Motion to Remand is GRANTED.

FACTS

This action was originally filed by Plaintiffs, a group of Tennessee Rural Telephone Companies, before the Tennessee Regulatory Authority ("TRA"), asking the TRA to open an investigation into the actions of Defendants in the State of Tennessee, commence a contested case about those actions, issue a Cease and Desist Order prohibiting Defendant Halo Wireless from providing telecommunications services in Tennessee until the TRA may hold a hearing on this matter, declare that the "toll traffic" sent by Defendant Halo Wireless to the Plaintiffs in Tennessee is subject to intrastate access charges, and order Defendants to pay all outstanding intrastate access charges. Docket No. 1-1.<sup>1</sup> Plaintiffs argue that Defendants mislabel calls to avoid paying access charges. Docket No. 10.

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<sup>1</sup> Unlike the companion *Bellsouth* action against Halo Wireless in this Court, this TRA Complaint does not seek interpretation or enforcement of an interconnection agreement ("ICA"). *Bellsouth Telecommunications, Inc. v. Halo Wireless, Inc.*, Case No. 3-11-cv-795.

Defendants filed Motions to Dismiss the TRA Complaint, arguing that the TRA has no jurisdiction in this matter. Docket Nos. 1-5 and 1-6. Then Defendant Halo Wireless filed a Suggestion of Bankruptcy, indicating that it had filed a voluntary petition for relief under the federal Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Texas (“the Bankruptcy Court”) and asserting that the automatic stay (11 U.S.C. § 362) prohibited any further action against Defendant Halo Wireless in the instant proceeding. Docket No. 1-7.

Thereafter, Defendant removed the TRA action here, alleging that this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 1452. Docket No. 1. Defendant Halo Wireless then moved to transfer this action to the Bankruptcy Court. Docket No. 6. Plaintiffs oppose Defendant’s Motion to Transfer and ask the Court to remand this action to the TRA. Docket No. 9.

Recently the Bankruptcy Court held that the various state commission proceedings involving the Debtor (Defendant Halo Wireless) are excepted from the Bankruptcy Code’s automatic stay, pursuant to 11 U.S.C. § 362(b)(4),<sup>2</sup> so that the commissions can determine whether they have jurisdiction and, if so, whether there is a violation of state law. Docket No. 20-2. The Bankruptcy Court held that the automatic stay does apply to prevent parties from bringing or continuing actions for money judgments or efforts to liquidate the amount of the complainants’ claims. *Id.*<sup>3</sup>

Defendant Halo Wireless has appealed this ruling of the Bankruptcy Court and has moved to stay the actions pending appeal. Docket No. 21. Defendant has represented that it intends to request certification of this issue to the Fifth Circuit Court of Appeals. *Id.*

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<sup>2</sup> 11 U.S.C. § 362(b)(4) provides that a bankruptcy petition does not stay the commencement or continuation of an action or proceeding by a governmental unit.

<sup>3</sup> The Bankruptcy Court did not rule that this action in this Court may proceed, yet neither party is arguing that the automatic stay should apply herein.

## MOTION TO REMAND

This action is not an appeal from a state commission decision; rather, this action was removed prior to a determination by the TRA. The Court will address the Motion to Remand first, since granting the Motion to Remand would make the Motion to Transfer moot.

Federal law provides that a party may remove any claim or cause of action in a civil action by a governmental unit to enforce such governmental unit's police or regulatory power to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under the Bankruptcy Code. 28 U.S.C. § 1452(a).<sup>4</sup> The Bankruptcy Code provides that the district courts have original but not exclusive jurisdiction of all civil proceedings arising in or related to bankruptcy cases. 28 U.S.C. § 1334(b).

Plaintiffs argue that the regulatory proceeding against Defendants in the TRA is not removable to federal court because it is a regulatory investigation, not a lawsuit. Docket No. 10. Defendants, on the other hand, contend that this action was properly removed under Section 1452(a) because the TRA proceeding is a "civil action"<sup>5</sup> and the TRA does not have jurisdiction because the claims implicate federal questions. Docket No. 19. Defendants also assert that the claims for relief fall within the Federal Communications Commission ("FCC") exclusive original jurisdiction. Docket No. 1.<sup>6</sup>

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<sup>4</sup> Section 1452 also provides that the Court to which such claim or causes of action is removed may remand such claim or cause of action on any equitable ground. 28 U.S.C. § 1452 (b).

<sup>5</sup> In the case of *In re T.S.P. Co., Inc.*, 2011 WL 1431473 (Bankr. E.D. Ky. April 14, 2011), the court held that the debtor could not remove the action under 28 U.S.C. § 1452, finding that administrative proceedings are not "civil actions" and are therefore not removable. *Id.*

<sup>6</sup> Despite this assertion, Defendant asks the Court to transfer the action to the U.S. Bankruptcy Court for the Eastern District of Texas, not to the FCC.

Federal district courts have jurisdiction to review certain types of decisions by state commissions, and the Telecommunications Act of 1996 ("the Act") provides for judicial review of certain types of determinations by state commissions. *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). Here, however, as noted above, there is no state commission determination to review.

This action concerns tariffs which are enacted and approved by the TRA and required under Tennessee law. Tenn. Code Ann. § 65-5-101. Plaintiffs contend that Defendants are violating state law, specifically Tenn. Code Ann. §§ 65-4-201 and 65-35-102. Docket No. 1-1. Plaintiffs state that it is *intrastate* charges which are at dispute herein. Docket No. 10. Under Tennessee law, the TRA "shall have the original jurisdiction to investigate, hear and enter appropriate orders to resolve all contested issues of fact or law arising as a result of the application of [the Act]." Tenn. Code Ann. § 65-5-110(a).

For these reasons, the Court finds that this matter should be remanded to the TRA. Therefore, Plaintiffs' Motion for Remand is GRANTED, and this case is remanded to the TRA. The Bankruptcy Court has held that the TRA action may proceed except to the extent the parties attempt to obtain and/or enforce a money judgment. There is no indication in the record that the Bankruptcy Court wants this case (or others like it) to be transferred to it. The parties' other arguments and Defendants' Motion to Transfer are moot.

IT IS SO ORDERED.

  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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

**ORDER GRANTING MOTION OF TDS TO DETERMINE THAT THE AUTOMATIC STAY IS NOT  
APPLICABLE, OR ALTERNATIVELY, TO LIFT THE AUTOMATIC STAY  
WITHOUT WAIVER OF 30-DAY HEARING REQUIREMENT [DKT. NO. 44]**

CAME ON for consideration the Motion to Determine that the Automatic Stay Is Not Applicable or, Alternatively, to Lift the Automatic Stay [Dkt No. 44] (the “TDS Motion”)<sup>1</sup> filed by TDS Telecommunications Corporation, on behalf of it and the other movants listed in the TDS Motion<sup>2</sup> (collectively, the “TDS Movants”), and it appearing that proper notice of the TDS Motion has been given to all necessary parties; and the Court, having considered the evidence and argument of counsel at the hearing on the TDS 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;

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<sup>1</sup> 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 of the AT&T Companies to Determine Automatic Stay Inapplicable and For Relief from the Automatic Stay* [Dkt. No. 13].

<sup>2</sup> In Georgia: Blue Ridge Telephone Company, Camden Telephone & Telegraph Company, Inc., Nelson-Ball Ground Telephone Company, and Quincy Telephone Company. In Tennessee: Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Tennessee Telephone Company, the TEC Companies (Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc.), North Central Telephone Coop., Inc., and Highland Telephone Cooperative, Inc.



**ORDERED** that the TDS 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 TDS Proceedings<sup>3</sup>, except as otherwise set forth herein; and it is further

**ORDERED** that, any regulatory proceedings in respect of the matters described in the TDS Motion, including the TDS Proceedings, 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”); and it is further

**ORDERED** that nothing in this Order precludes the TDS Movants 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 TDS Proceedings; 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 TDS Movants, 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 TDS Proceedings; and it is further

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<sup>3</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the TDS Motion.

**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

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

IN RE: §  
§  
HALO WIRELESS, INC., § Case No. 11-42464  
§ (Chapter 11)  
Debtor. §

**ORDER DENYING MOTIONS FOR STAY PENDING APPEAL**

Now before the Court are three motions to stay pending appeal (collectively, the “Stay Motions”) filed by the debtor on October 28, 2011. Each of the Stay Motions consists of a request for a stay pending the resolution of the debtor’s appeals from the Court’s determination that regulatory proceedings currently pending before various state utility commissions are excepted from the automatic stay in bankruptcy pursuant to 11 U.S.C. § 362(b)(4). Because the Stay Motions are substantially identical and the appeals will essentially present the same issues for consideration, it is appropriate for this Court to consider the Stay Motions on a consolidated basis.

The Court has jurisdiction to consider the Stay Motions pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a). The Court has the authority to enter a final order regarding these contested matters since they constitute core proceedings as contemplated by 28 U.S.C. § 157(b)(2)(A) and (O). This Court’s jurisdiction is also reflected in the provisions of Federal Rule of Bankruptcy Procedure 8005.<sup>2</sup>

Under Federal Rule of Bankruptcy Procedure 8005, a court’s “decision to grant or

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<sup>2</sup> Federal Rule of Bankruptcy Procedure 8005 provides, in pertinent part, that:

[A] motion for a stay of the judgment, order, or decree of a bankruptcy judge...or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court...reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the [Bankruptcy] Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest.

deny a stay pending appeal rests in the discretion of that court. However, the exercise of that discretion is not unbridled.” *In re First S. Savs. Ass’n*, 820 F.2d 700, 709 (5th Cir. 1987). Rather, this Court “must exercise its discretion in light of what this court has recognized as the four criteria for a stay pending appeal.” *Id.* The four criteria are: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest. *Arnold v. Garlock, Inc.*, 278 F.3d 426, 439-42 (5th Cir. 2001); *In re First S. Savs. Ass’n*, 820 F.2d at 709. Each criterion must be met, and “the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” *Arnold*, 278 F.3d at 439 (quoting *In re First S. Savs. Ass’n*, 820 F.2d at 704).

The Court, having reviewed the debtor’s Stay Motions, considered the legal arguments presented by the parties at the hearing on November 1, 2011, and reviewed the record in this case, finds and concludes that the debtor has not made a showing of irreparable injury absent a stay. The harms alleged by the debtor – *i.e.*, the cost of the proceeding before the state utility commissions and the potential for differing results amongst the commissions – are “part and parcel of cooperative federalism.” *Budget Prepay, Inc. v. AT&T Corp.*, 605 F.3d 273, 281 (5th Cir. 2010). On the other hand, the granting of a stay would substantially harm other parties by interfering with the state utility commissions’ ability to regulate public utilities and by requiring creditors to continue providing services to the debtor in the future. Moreover, the granting of a stay would not comport with the public interest, including the policies underlying the concept of cooperative federalism and the interest of the public utility commissions, as the experts on the laws and rules governing the telecommunications/telephone industry, in regulating

the industry for the benefit of the users of the services.

With respect to the final element, the Court recognizes that it is difficult for the debtor to establish (in this Court) a substantial likelihood of success on the merits when this Court issued the underlying ruling. This case involves a serious legal question and, in light of the absence of controlling Fifth Circuit authority, there is a risk that this Court's decision could be reversed. The Court nonetheless finds that the debtor failed to sustain its burden to establish a substantial likelihood of success on the merits. Even if the debtor could be said to have presented a substantial case on the merits, the balance of the equities does not weigh heavily in favor of granting the stay when the Court's prior determination allows the debtor to raise its legal issues and arguments before the state utility commissions. Accordingly,

**IT IS ORDERED, ADJUDGED and DECREED** that the Stay Motions [Docket Nos. 176, 177 and 178] must be, and hereby is, **DENIED**.

Signed on 11/1/2011

*Brenda T. Rhoades*

SR

HONORABLE BRENDA T. RHOADES,  
CHIEF UNITED STATES BANKRUPTCY JUDGE