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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

2011 NOV 17 PM 3: 56

IN RE: :
COMPLAINT OF :
CONCORD TELEPHONE EXCHANGE, INC., :
HUMPHREYS COUNTY TELEPHONE :
COMPANY, TELLICO TELEPHONE :
COMPANY, TENNESSEE TELEPHONE :
COMPANY, CROCKETT TELEPHONE : DOCKET NO.: 1100108
COMPANY, INC. PEOPLES TELEPHONE :
COMPANY, WEST TENNESSEE :
TELEPHONE COMPANY, INC., NORTH :
CENTRAL TELEPHONE COOP., INC. AND :
HIGHLAND TELEPHONE COOPERATIVE, :
INC. AGAINST HALO WIRELESS, INC., :
TRANSCOM ENHANCED SERVICES, INC. :
AND OTHER AFFILIATES FOR FAILURE :
TO PAY TERMINATING INTRASTATE :
ACCESS CHARGES FOR TRAFFIC AND :
OTHER RELIEF AND AUTHORITY TO :
CEASE TERMINATION OF TRAFFIC :

T.R.A. DOCKET ROOM

MOTION TO ABATE

COMES NOW Halo Wireless, Inc. ("Halo" or the "Debtor") and files this Motion to Abate, respectfully requesting that the Tennessee Regulatory Authority ("TRA") abate the above-entitled proceeding (the "Proceeding") until the appeal, discussed below, is finished.

1. On October 26, 2011, the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "Bankruptcy Court") ruled that twenty state commission proceedings (including this Proceeding), all of which were filed by *private parties* seeking relief against *private parties* before the state commissions *as tribunals*,

constitute actions “by a governmental unit” and that such actions were “to enforce such governmental unit’s police or regulatory power.”¹

2. Halo immediately requested that the Bankruptcy Court stay its ruling pending an appeal. On Tuesday, November 1, 2011, the Bankruptcy Court denied Halo’s motions for stay pending appeal,² but at the same time certified the appeal to the Fifth Circuit on the specific ground that there is no controlling Fifth Circuit precedent.³ In the Bankruptcy Court’s Order Denying Stay, the court stated on page 3: **“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”** (Ex. B, emphasis added).

3. On November 7, 2011, the Bankruptcy Court entered its “Certification to the Court of Appeals” pursuant to 28 U.S.C. § 158(d)(2), stating that the October 26, 2011 decision, “involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States.” (Ex. C). The Bankruptcy Court’s finding that there is no dispositive precedent on the controlling issue establishes the need to wait for the Court of Appeals before making a decision which may well prove fatal for Halo.

4. On November 3, 2011, the United States District Court for the Middle District of Tennessee, relying upon the Bankruptcy Court orders, remanded this case to the TRA. *Concord Telephone Exchange, Inc. v. Halo Wireless, Inc.*, Case No. 3-11-

¹ True and correct copies of the three orders entered by the Bankruptcy Court on October 26, 2011 are attached as Exhibit “A.”

² A copy of the Order Denying Motions For Stay Pending Appeal is attached hereto as Exhibit “B” (the **“Order Denying Stay”**).

³ The Bankruptcy Court made this ruling from the bench. A written certification was made on November 7, 2011, a copy of which is attached hereto as Exhibit “C”.

0796, Dkt. 23 (M.D. Tenn). In entering the remand order, the Middle District of Tennessee did not consider the Bankruptcy Court's certification to the Court of Appeals of the unsettled controlling question of law. The Middle District of Tennessee also erroneously viewed the case to be an argument over state tariffs, rather than as a matter that would require the TRA to decide whether Halo is acting within the scope of its FCC license to provide CMRS-based telephone exchange service to end users that happen to be enhanced/information service providers, something that Halo contends state regulators cannot do.⁴ Halo respectfully believes that the Middle District of Tennessee erred in both respects. Halo also respectfully suggests that such errors could have been avoided had that court not acted in a precipitous fashion after the entry of the Bankruptcy Court's decision of October 26, 2011.

5. Halo believes that reversal will occur. The Bankruptcy Court's October 26, 2011 decision, and thus the Tennessee decision, turn upon an erroneous interpretation of 11 U.S.C. § 362(b)(4). The words "by a governmental unit," as used in that statute, mean exactly what they say. The state commission proceedings at issue, including this Proceeding, are merely civil actions brought by private parties—not by a governmental unit—and are subject to the automatic stay. The Bankruptcy Court's decision ignores the

⁴ The Supreme Court and several courts of appeals have consistently held that state PUCs cannot undertake to interpret or enforce federal licenses because "a multitude of interpretations of the same certificate" will result. *See, e.g., Service Storage and Transfer v. State of Virginia*, 359 U.S. 171, 178, 79 S. Ct. 714, 3 L. Ed. 2d 717, 721-722 (1959). Even if the state PUC or TDS believe that the federally-licensed entity is engaging in some "scheme" or "subterfuge" to avoid state regulation the proper forum is the FCC. The PUC cannot assert jurisdiction, rule that the service or practice is a sham or scheme and then assert state regulatory power. Instead, the state's remedy (also available to TDS) is to petition the federal licensing body for relief. 79 S.Ct. at 719. A state PUC cannot take any action that would "amount to a suspension or revocation" of a federal license. *Castle, Attorney General v. Hayes Freight Lines*, 348 U.S. 61, 64, 75 S. Ct. 191, 193, 99 L. Ed. 68 (1954). These decisions demonstrate that the jurisdictional question of "who decides" the rights, duties and obligations flowing from a federal license is equally important to – and is a first-order question prior to – the substantive question of what those rights, duties and obligations are. *See State of Texas v. United States*, 866 F.2d 1546, 1552, 1554-1555 (5th Cir. 1989).

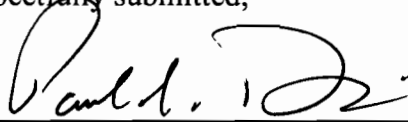
plain qualifier in section 362(b)(4) that a proceeding be instituted by the government instead of a private party. Further, the Bankruptcy Court's interpretation effectively removes the word "administrative" from the list of those proceedings subject to the automatic stay by 11 U.S.C. § 362(a)(1). Halo believes the Fifth Circuit will agree and reverse.

6. Halo will be filing motions for stay pending appeal with the referring district court and, if necessary, with the Fifth Circuit Court of Appeals. 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. The TRA is of course not a forum for review of an order from the Bankruptcy Court for the Eastern District of Texas; that is the role of the referring district court and the Fifth Circuit. Nonetheless, the TRA can properly decide to abate this matter pending disposition of the appeal. No injustice will result from a brief delay while the Texas proceedings run their proper course. When it suits their purpose, the Complainants ask the TRA to rely upon the Texas proceedings. The Complainants should not be allowed to pick and chose the parts of the Texas proceedings they ask the TRA to follow.

7. Proceeding with the case now based on the Bankruptcy Court's unreviewed ruling exposes all parties to the very real risk that all of the time and expense they invest in this Proceeding will be lost. At minimum, the TRA should simply refrain from acting until there is a final decision in the Texas proceedings. For the foregoing reasons, Halo respectfully requests that the TRA abate the above-entitled proceeding.

Dated this 17th day of November, 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Abate* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and designated contact individuals on this the 17th day of November, 2011:

**ATTORNEYS FOR CONCORD TELEPHONE EXCHANGE, INC.,
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE
COMPANY, TENNESSEE TELEPHONE COMPANY, CROCKETT
TELEPHONE COMPANY, INC. PEOPLES TELEPHONE COMPANY, WEST
TENNESSEE TELEPHONE COMPANY, INC., NORTH CENTRAL
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Paul S. Davidson

**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 Proceedings², 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 Companies³ 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.

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. §

**ORDER GRANTING MOTION OF THE TEXAS AND
MISSOURI TELEPHONE COMPANIES TO DETERMINE AUTOMATIC STAY
INAPPLICABLE AND FOR RELIEF FROM THE AUTOMATIC STAY [DKT. NO. 31]**

Upon consideration of *The Texas and Missouri Telephone Companies' Motions to Determine Automatic Stay Inapplicable and in the Alternative, For Relief from Same* [Dkt. No. 31] (the "TMTC Motion")¹, and it appearing that proper notice of the TMTC Motion has been given to all necessary parties; and the Court, having considered the evidence and argument of counsel at the hearing on the TMTC 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 TMTC 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 Proceedings², except as otherwise set forth herein; and it is further

¹ The Court contemporaneously is entering separate orders granting the *Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and For Relief from Automatic Stay* [Dkt. No. 13] 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 The term "State Commission Proceeding" as used herein refers to those proceedings identified in the TMTC Motion at ¶ 5, fn. 11.

ORDERED that, any regulatory proceedings in respect of the matters described in the TMTC Motion, including the State Commission 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 TMTC Companies³ 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 Proceedings; and (ii) then determined that the Debtor has violated applicable law over which the particular state commission has jurisdiction; and it is further

³ The TMTC Companies include Alenco Communications, Inc.; Alma Communications Company d/b/a Alma Telephone Company; Big Bend Telephone Company, Inc.; BPS Telephone Company; Brazoria Telephone Company; Chariton Valley Telecom Corporation; Chariton Valley Telephone Company; Choctaw Telephone Company; Citizens Telephone Company of Higginsville, Missouri; Craw-Kan Telephone Cooperative, Inc.; Eastex Telephone Cooperative, Inc.; Electra Telephone Company, Inc.; Ellington Telephone Company; Farber Telephone Company; Fidelity Communication Services I, Inc.; Fidelity Communication Services II, Inc.; Fidelity Telephone Company; Five Area Telephone Cooperative, Inc.; Ganado Telephone Company; Goodman Telephone Company; Granby Telephone Company; Grand River Mutual Telephone Corporation; Green Hills Area Cellular d/b/a Green Hills Telecommunications Services; Green Hills Telephone Corporation; Guadalupe Valley Telephone Cooperative, Inc.; Hill Country Telephone Cooperative, Inc.; Holway Telephone Company; Iamo Telephone Company; Industry Telephone Company; Kingdom Telephone Company; K.L.M. Telephone Company; Lake Livingston Telephone Company, Inc.; Lathrop Telephone Company; Le-Ru Telephone Company; Livingston Telephone Company; Mark Twain Communication Company; Mark Twain Rural Telephone Company; McDonald County Telephone Company; Mid-Missouri Telephone Company, a Corporate Division of Otelco, Inc.; Mid-Plains Rural Telephone Cooperative, Inc.; Miller Telephone Company; MoKan Dial, Inc.; New Florence Telephone Company; New London Telephone Company; Nortex Communications Company; Northeast Missouri Rural Telephone Company; North Texas Telephone Company; Orchard Farm Telephone Company; Ozark Telephone Company; Peace Valley Telephone Company, Inc.; Peoples Telephone Cooperative, Inc.; Riviera Telephone Company, Inc.; Rock Port Telephone Company; Seneca Telephone Company; Santa Rosa Telephone Cooperative, Inc.; Southwest Texas Telephone Company; Steelville Telephone Exchange, Inc.; Stoutland Telephone Company; Tatum Telephone Company; Totelcom Communications, LLC; Valley Telephone Cooperative, Inc. and West Plains Telecommunications, Inc.

ORDERED that the TMTC 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

EOD

10/26/2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:

HALO WIRELESS, INC.

DEBTOR.

§
§
§
§
§

CHAPTER 11

CASE No. 11-42464

**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")¹ filed by TDS Telecommunications Corporation, on behalf of it and the other movants listed in the TDS Motion² (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;

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

² 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 Proceedings³, 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

³ 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

EOD

11/01/2011

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 8005.²

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

² 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

United States Bankruptcy Court
Eastern District of Texas

In re:
Halo Wireless, Inc.
Debtor

Case No. 11-42464-btr
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0540-4

User: carter1
Form ID: pdf400

Page 1 of 4
Total Noticed: 42

Date Rcvd: Nov 01, 2011

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Nov 03, 2011.

db +Halo Wireless, Inc., 2351 West Northwest Highway, Suite 1204, Dallas, TX 75220-8411
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aty +Norman J Kennard, Thomas Long Niesen & Kennard, 212 Locust Street, Ste. 500,
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aty +Toby L. Gerber, Jenkins & Gilchrist, First Interstate Bank Tower, Suite 3200,
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cr +Blue Ridge Telephone Company, c/o David M. Bennett, Thompson & Knight LLP,
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cr +Quincy Telephone Company, c/o David M. Bennett, Thompson & Knight LLP, 1722 Routh Street,
Suite 1500, Dallas, TX 75201-2532
intp +Schlee, Huber, McMullen & Krause, Office Manager, PO Box 32430, Kansas City, MO 64171-5430
cr Sierra Telephone Company, Inc., P.O. Box 219, Oakhurst, CA 93644-0219
cr +Stoutland Telephone Company, c/o David M. Bennett, Thompson & Knight LLP, 1722 Routh Street,
Suite 1500, Dallas, TX 75201-2532
cr +TDS Telecommunications Corporation, c/o David M. Bennett, Thompson & Knight LLP,
1722 Routh Street, Suite 1500, Dallas, TX 75201-2532
cr +Tellico Telephone Company, c/o David M. Bennett, Thompson & Knight LLP, 1722 Routh Street,
Suite 1500, Dallas, TX 75201-2532
cr +Tennessee Telephone Company, c/o David M. Bennett, Thompson & Knight LLP, 1722 Routh Street,
Suite 1500, Dallas, TX 75201-2532
intp +The Missouri Public Service Commission, Missouri Public Service Commission,
200 Madison Street, Jefferson City, MO 65101-3254
cr The Ponderosa Telephone Co., P.O. Box 21, O'Neals, CA 93645-0021
cr The Siskiyou Telephone Company, P.O. Box 157, Etna, CA 96027-0157
cr +Union Springs Telephone Company, Inc., P.O. Box 240967, 8149 Old Federal Road,
Montgomery, AL 36117-8009
intp +Universal Services Admin. Co., Legal Department, 2000 L Street NW, Suite 200,
Washington, DC 20036-4924
intp +Vitali Shapavalau, c/o Robert A. Simon, Barlow Garsek & Simon, 3815 Lisbon Street,
Fort Worth, TX 76107-5699
cr Volcano Telephone Company, P.O. Box 1070, Pine Grove, CA 95665-1070
cr +Winterhaven Telephone Company, P.O. Box 1566, Oregon City, OR 97045-0566

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

intp +E-mail/Text: pilot@totalhighspeed.com Nov 02 2011 05:27:36 American Specialty Aviation,
120 Bluff Cove, Blue Eye, MO 65611-5648
cr +E-mail/Text: dallas.bankruptcy@LGBS.com Nov 02 2011 05:27:14 Smith County,
Linebarger Goggan Blair & Sampson, LLP, c/o Laurie Spindler Huffman, 2323 Bryan Street,
Suite 1600, Dallas, TX 75201-2644

TOTAL: 2

***** BYPASSED RECIPIENTS (continued) *****

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

cr Alenco Communications, Inc.
cr Alma Communications Company
cr BPS Telephone Company
cr Ballard Rural Telephone Cooperative Corporation, I
cr BellSouth Telecommunications, LLC
cr Big Bend Telephone Company, Inc.
cr Brandenburg Telephone Company
cr Brazoria Telephone Company
cr Chariton Valley Telecom Corporation
cr Chariton Valley Telephone Corporation
cr Choctaw Telephone Company
cr Citizens Telephone Company of Higginsville, Missou
cr Craw-Kan Telephone Cooperative, Inc.
cr Crockett Telephone Company, Inc.
cr Duo County Telephone Cooperative Corporation, Inc.
cr Eastex Telephone Cooperative, Inc.
cr Electra Telephone Company, Inc.
cr Ellington Telephone Company
cr Farber Telephone Company
cr Fidelity Communication Services I, Inc.
cr Fidelity Communication Services II, Inc.
cr Fidelity Telephone Company
cr Five Area Telephone Cooperative, Inc.
cr Foothills Rural Telephone Cooperative, Inc.
cr Ganado Telephone Company
cr Gearheart Communications Co., Inc.
cr Goodman Telephone Company
cr Granby Telephone Company
cr Grand River Mutual Telephone Corporation
cr Green Hills Area Cellular
cr Green Hills Telephone Corporation
cr Guadalupe Valley Telephone Cooperative, Inc.
cr Highland Telephone Cooperative, Inc.
cr Hill Country Telephone Cooperative, Inc.
cr Holway Telephone Company
cr Iamo Telephone Company
cr Illinois Bell Telephone Company
cr Indiana Bell Telephone Company Inc.
cr Industry Telephone Company
cr K.L.M. Telephone Company
cr Kingdom Telephone Company
cr Lake Livingston Telephone Company, Inc.
cr Lathrop Telephone Company
cr Le-Ru Telephone Company
cr Livingston Telephone Company
cr Logan Telephone Cooperative, Inc.
cr Mark Twain Communication Company
cr Mark Twain Rural Telephone Company
cr McDonald County Telephone Company
sp McGuire, Craddock & Strother, P.C.
cr Michigan Bell Telephone Company
cr Mid-Missouri Telephone Company
cr Mid-Plains Rural Telephone Cooperative, Inc.
cr Miller Telephone Company
cr MoKan Dial, Inc.
cr Mountain Rural Telephone Cooperative Corporation,
cr Nevada Bell Telephone Company
cr New Florence Telephone Company
cr New London Telephone Company
cr Nortex Communications Company
cr North Central Telephone Coop, Inc.
cr North Central Telephone Cooperative Corporation
cr North Texas Telephone Company
cr Northeast Missouri Rural Telephone Company
cr Orchard Farm Telephone Company
cr Ozark Telephone Company
cr Pacific Bell Telephone Company
cr Peace Valley Telephone Company, Inc.
cr Peoples Rural Telephone Cooperative, Inc.
cr Peoples Telephone Cooperative, Inc.
cr Riviera Telephone Company, Inc.
cr Rock Port Telephone Company
cr Santa Rosa Telephone Cooperative, Inc.
cr Seneca Telephone Company
cr South Central Rural Telephone Cooperative Corporat
cr Southwest Texas Telephone Company
cr Southwestern Bell Telephone Company

***** BYPASSED RECIPIENTS (continued) *****

cr Steelville Telephone Exchange, Inc.
cr Stoutland Telephone Company
cr Tatum Telephone Company
cr Thacker-Grigsby Telephone Company, Inc.
cr The Ohio Bell Telephone Company
cr Totelcom Communications, LLC
cr Valley Telephone Cooperative, Inc.
cr West Kentucky Rural Telephone Cooperative Corporat
cr West Plains Telecommunications, Inc.
cr West Tennessee Telephone Company, Inc.
cr Windstream Communications, Inc.
cr Wisconsin Bell Telephone, Inc.
cr* +Vitali Shapavalau, C/o Robert A. Simon, Barlow Garsek & Simon, LLP, 3815 Lisbon Street,
Fort Worth, TX 76107-5699

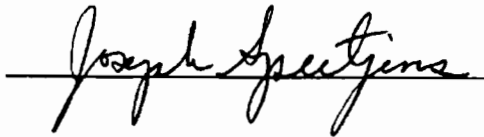
TOTALS: 89, * 1, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Nov 03, 2011

Signature: 

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on November 1, 2011 at the address(es) listed below:

Brook Bennett Brown on behalf of Creditor Alenco Communications, Inc. bbrown@mcginnislaw.com
Cassandra Sepanik on behalf of Creditor Blue Ridge Telephone Company
cassandra.sepanik@tklaw.com, sue.curran@tklaw.com
Dana H Billingsley on behalf of Creditor Pine Belt Telephone Company, Inc.
dana@wilkersonbryan.com
Deirdre Carey Brown on behalf of Creditor Alenco Communications, Inc. dbrown@mcginnislaw.com,
rbrokaw@mcginnislaw.com
Dennis G. Friedman on behalf of Creditor BellSouth Telecommunications, LLC
dfriedman@mayerbrown.com, tsarlo@mayerbrown.com
E. P. Keiffer on behalf of Debtor Halo Wireless, Inc. pkeiffer@wgblawfirm.com
Howard Marc Spector on behalf of Creditor Ballard Rural Telephone Cooperative Corporation,
Inc. hspector@spectorjohnson.com, hrogers@spectorjohnson.com
J. Mark Davis on behalf of Creditor Windstream Communications, Inc. jmdavis@wlj.com,
cfritts@wlj.com
J. Mark Chevallier on behalf of Spec. Counsel McGuire, Craddock & Strother, P.C.
mchevallier@mcslaw.com
J. Tyson Covey on behalf of Creditor BellSouth Telecommunications, LLC jcovey@mayerbrown.com
Jennifer L. Heintz on behalf of Interested Party The Missouri Public Service Commission
jennifer.heintz@psc.mo.gov, dawn.carafeno@psc.mo.gov; cassie.melloway@psc.mo.gov
John M. Vardeman on behalf of U.S. Trustee US Trustee john.m.vardeman@usdoj.gov
Katharine Elizabeth Battaia on behalf of Creditor Blue Ridge Telephone Company
katie.battaia@tklaw.com, sue.curran@tklaw.com
Kim E. Moses on behalf of Debtor Halo Wireless, Inc. kmoses@wgblawfirm.com
Laurie Spindler Huffman on behalf of Creditor Smith County laurie.spindler@publicans.com,
Matilde.Alvarado@publicans.com
Mark A. Platt on behalf of Creditor BellSouth Telecommunications, LLC mplat@fulbright.com
Mark Peyton Schreiber on behalf of Creditor Cal-Ore Telephone Co., mschreiber@cwclaw.com
Michael Kabat on behalf of Creditor Alenco Communications, Inc. mkabat@mcginnislaw.com
Richard D. Milvenan on behalf of Creditor Alenco Communications, Inc. rmilvenan@mcginnislaw.com
Robert A. Simon on behalf of Creditor Vitali Shapavalau rsimon@bgsfirm.com
Shane Austin Lynch on behalf of Debtor Halo Wireless, Inc. slynch@wgblawfirm.com
Steven H. Thomas on behalf of Debtor Halo Wireless, Inc. sthomas@mcslaw.com,
vkrajca@mcslaw.com
Thomas S. Henderson on behalf of Creditor Cal-Ore Telephone Co., thenderson@tsh-atty.com
Toby L. Gerber on behalf of Creditor Pacific Bell Telephone Company tgerber@fulbright.com
Troy Majoue on behalf of Plaintiff Halo Wireless, Inc. tmajoue@mcslaw.com
William H. Daniel on behalf of Creditor Alenco Communications, Inc. bdaniel@mcginnislaw.com,
craup@mcginnislaw.com; tlindsay@mcginnislaw.com

TOTAL: 26

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. §

CERTIFICATION TO COURT OF APPEALS BY THE BANKRUPTCY COURT

A notice of appeal having been filed in the above-styled matter on October 26, 2011, the Court hereby certifies to the Court of Appeals for the Fifth Circuit under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal is not required under 28 U.S.C. § 158(a).

This certification arises in an appeal from a final judgment, order or decree of the United States Bankruptcy Court (*Order Granting Motion Of The AT&T Companies To Determine Automatic Stay Inapplicable And For Relief From The Automatic Stay* [Dkt. No. 159]) for the Eastern District of Texas entered on October 26, 2011.

The judgment, order or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States.

Signed on 11/7/2011

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: § CASE NO. 11-42464-btr-11
§
HALO WIRELESS, INC., §
§
DEBTOR. §

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Leave to appeal is not required under 28 U.S.C. § 158(a).

This certification arises in an appeal from a final judgment, order or decree of the United States Bankruptcy Court (*Order Granting Motion Of The Texas And Missouri Telephone Companies To Determine Automatic Stay Inapplicable And For Relief From The Automatic Stay* [Dkt. No. 160]) for the Eastern District of Texas entered on October 26, 2011.

The judgment, order or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States.

Signed on 11/7/2011

Brenda T. Rhoades SR
HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE

EOD

11/07/2011

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

IN RE:

HALO WIRELESS, INC.,

DEBTOR.

§
§
§
§
§

CASE NO. 11-42464-btr-11

CERTIFICATION TO COURT OF APPEALS BY THE BANKRUPTCY COURT

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Leave to appeal is not required under 28 U.S.C. § 158(a).

This certification arises in an appeal from a final judgment, order or decree of the United States Bankruptcy Court (*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. 161]) for the Eastern District of Texas entered on October 26, 2011.

The judgment, order or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States.

Signed on 11/7/2011

Brenda T. Rhoades SR
HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE