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November 18, 2011

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

Re: Docket 11-00108, *Complaint of TDS Telecom, et al. v. Halo Wireless, Inc., et al.*

Dear Chairman Hill:

On November 10, 2011, the Complainants in the above-captioned docket submitted a letter requesting expedited hearings in the above matter. We are now in receipt of a letter dated November 17, 2011 submitted in response by Steven H. Thomas (McGuire, Craddock & Strother, P.C.) on behalf of Halo Wireless, Inc. ("Halo") arguing that: (1) the Bankruptcy Court's ruling implicitly requires a two step hearing process (the first for jurisdiction and the second for substance); and (2) it would be contrary to the Bankruptcy Court's Order to require Halo to proceed expeditiously. The Complainants disagree with both of these propositions for the following reasons.

First, there is nothing in Bankruptcy Judge's Rhoades' Order dated October 10, 2011 that requires a bifurcated hearing process and, indeed, no aspect of the Order seeks to formulate the procedures to be followed by any of the state commissions.¹ The passage referred to in Halo's November 7, 2011 letter to you, simply relates to the obvious sequencing of TRA's *determination* first of jurisdiction and then of applicable law. This is almost always the case in the Authority's regulatory dockets, particularly in the telecommunications field, whether jurisdictional questions are commonly raised. There is nothing in the Bankruptcy Court's October 26, 2011 Order, however, that purports to require that the TRA institute a particular procedure for *hearing*, which is what Halo suggests in its letter.

In her bench opinion, Judge Rhoades was clear that the states could undertake two inquiries:

¹ *In re Halo Wireless, Inc.*, United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, Case No. 11-42464 ("Halo Bankruptcy Proceeding"), 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 dated October 26, 2011, a copy of which is attached as Exhibit "A."

In this case, the actions of the Public Utilities Commission[s] in determining their authority, if any, over the debtor, are aimed at effectuating public policies the Public Utility Commissions are seeking to enforce regulatory statutes, including their tariffs and rules. The Public Utility Commission[s] ha[ve] the jurisdiction to determine their own jurisdiction.²

But there was no indication by the Judge that two separate hearings would be required. Upon questioning by Counsel for Halo, Judge Rhoades clarified that the states “can simply determine whether they have jurisdiction. They can determine whether there was a violation -- if they have jurisdiction, whether there's a violation of state law.”³ If the states have “the jurisdiction to determine their own jurisdiction,” they also have the right to use their own procedures to do so.

The TRA can and should hear the facts regarding the traffic delivered by Halo and the operations of Halo and Transcom for the purpose of both determining jurisdiction and applying the appropriate remedy. Factual development should occur concurrently, if for no other reason than because judicial economy warrants it. The facts concerning whether the traffic delivered is intrastate telecommunications traffic are the very same facts that are relevant to determining whether there have been violations of Tennessee law. The inquiry into whether Halo and Transcom are immune from state jurisdiction, as they claim, when delivering third party originated (mostly wireline) calls as wholesale interexchange carriers, involves the same factual inquiry regarding Halo’s claim to be providing commercial mobile radio service and Transcom’s claim to be an enhanced service provider. The same facts that will resolve the jurisdictional issue will drive the determination of whether certification is required and access charges due the complainants. It makes absolutely no sense to require that two separate hearings be held to develop the same set of facts.

With respect to Halo’s opposition to a prompt hearing, Halo has expended considerable effort and legal fees to avoid the Authority’s hearing this matter, as they continue to obtain the complainant’s toll terminating services for free with no intention of ever paying. The complaint was filed on July 6, 2011 and was initially scheduled to be considered by the TRA at its August 22, 2011 Directors Conference. Instead, Halo declared bankruptcy and, then, inappropriately removed the matter to Federal District Court, taking jurisdiction away from the Authority. This inappropriate legal maneuvering has now been rectified by the Bankruptcy Court’s ruling that the automatic stay provision of the Bankruptcy Code never did apply to Halo and the Federal District’s reversal of the removal, which involves both Halo and its affiliated company, Transcom Enhanced Services, Inc. (“Transcom”), and remand back to the TRA for hearing and resolution. Inaction at this point only further enriches Halo and Transcom.

Finally, the Complainants disagree with the assertion that the proposed schedule is “very aggressive.” The schedule proposed by the Complainants is no shorter than that adopted by the Georgia Public Service Commission in its hearing of a nearly identical complaint, a copy of which is attached.⁴ Testimony was already developed in that case and will need only minor alteration to file it before the TRA. The Bankruptcy Judge previously rejected Halo’s request for a stay noting that:

The harms alleged by the debtor - *i.e.*, the cost of proceeding before state utility commissions and the potential for different results among the commissions, are ‘part and parcel of cooperative federalism.’ On the other hand, the granting of a stay would substantially harm other parties by interfering with the state utility

² *Halo Bankruptcy Proceeding*, Transcript of Proceedings held October 7, 2011, NT at 107. Exhibit “B.”

³ *Id.*, NT at 108. Exhibit “B.”

⁴ Exhibit “C.”

commissions' ability to regulate public utilities and by requiring creditors to continue providing services to the debtor in the future.⁵

In other words, the Bankruptcy Court rejected the exact same claims made now again before the TRA of the difficulty imposed upon Halo of defending itself in what it claims are "twenty simultaneous state commission proceedings..." As noted before the Bankruptcy Court previously, it was Halo's decision to enter into business in multiple states and Halo should not be heard to argue that compliance with the rules and regulations of those states is a hardship.

The Complainants reiterate their request that the Authority establish an expedited hearing schedule consisting of a single set of hearings to address jurisdictional and substantive matters and that the Authority proceed promptly to do so.

We thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "H. LaDon Baltimore". The signature is fluid and cursive, with the first name "H." and last name "Baltimore" clearly distinguishable.

H. LaDon Baltimore
Norman J. Kennard
Attorneys for Petitioners

cc: Paul S. Davidson
James M. Weaver
VIA E-MAIL

Steven H. Thomas
W. Scott McCollough

⁵ *Halo Bankruptcy Proceeding*, Order denying Motions for Stay pending appeal signed November 1, 2011, a copy of which is attached as Exhibit "D."

EOD

10/26/2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

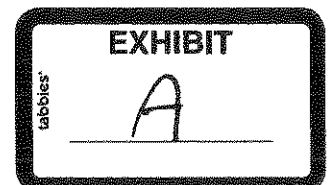
IN RE: §
§ CHAPTER 11
HALO WIRELESS, INC. §
§ CASE NO. 11-42464
DEBTOR. §

**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")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

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

IN RE:) BK. NO: 11-42464-BTR-11
)
HALO WIRELESS, INC.)
D E B T O R)

* * * * *

TRANSCRIPT OF PROCEEDINGS

* * * * *

BE IT REMEMBERED, that on the 7th day of October,
2011, before the HONORABLE BRENDA T. RHOADES, United States
Bankruptcy Judge at Plano, Texas, the above styled and
numbered cause came on for hearing, and the following
constitutes the transcript of such proceedings as hereinafter
set forth:

1 362(b)(4) and Section 362(b)(5) should be construed broadly
2 so as not to override state laws enacted to protect the
3 public interest.

4 In this case, the actions of the Public Utilities
5 Commission in determining their authority, if any, over the
6 debtor, are aimed at effectuating public policies the Public
7 Utility Commissions are seeking to enforce regulatory
8 statutes, including their tariffs and rules. The Public
9 Utility Commission had the jurisdiction to determine their
10 own jurisdiction.

11 Given the public interest and public policies at stake,
12 the Court finds that in this case the Public Utility
13 Commissions are not stayed under Section 362(b)(4). However,
14 the automatic stay does apply to the complainants and to the
15 State Commissions and prevents them from bringing or
16 continuing any actions for money judgment or any efforts to
17 collect amounts allegedly due to the complainants.

18 Further, it would be premature at this time to lift the
19 stay to allow the individual parties to liquidate their
20 alleged claims against the debtor until the Public Utility
21 Commissions first decide the issue of whether or to what
22 extent the debtor subject to the rules and regulations of the
23 Public Utility Commissions, and if so, whether the debtor has
24 violated such state laws.

25 That is the ruling of the Court with respect to the

1 362(b)(4) issue. And I think it's dispositive of the other
2 issue, as well.

3 MR. KEIFFER: Just a little instruction, if I
4 could, because I want the -- I want to make sure I understood
5 what the Court is saying. The Court says that they cannot
6 seek a money judgment or -- can they liquidate the amount of
7 the claim that they're having it all, or is it just to find
8 out --

9 THE COURT: They cannot -- they cannot
10 liquidate the amount of the complainants' claims.

11 MR. KEIFFER: So they can't --

12 THE COURT: They can simply determine whether
13 they have jurisdiction. They can determine whether there was
14 a violation -- if they have jurisdiction, whether there's a
15 violation of state law.

16 MR. KEIFFER: Who would be the parties --
17 would that mean that the parties, such as Mr. Gerber's and
18 Mr. Bennett's clients, would they be the parties pressing
19 those positions?

20 THE COURT: They can participate in the state
21 court -- in the Commissions' proceedings. They simply cannot
22 liquidate their claims without a lifting of the stay. And
23 the stay will not lift and the Court will not consider any
24 further motions to lift stay until the Public Utility
25 Commissions first determine whether they have jurisdiction,

COMMISSIONERS:

STAN WISE, CHAIRMAN
CHUCK EATON
TIM G. ECHOLS
H. DOUG EVERETT
LAUREN "BUBBA" McDONALD, JR.



FILED

JUN 28 2011

EXECUTIVE SECRETARY
G.P.S.C.

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE McALISTER
EXECUTIVE SECRETARY

Georgia Public Service Commission

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ATLANTA, GEORGIA 30334-1570

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Docket No. 34219

DOCKET # 34219

DOCUMENT # 136804

In Re: COMPLAINT OF TDS TELECOM ON BEHALF OF ITS SUBSIDIARIES BLUE RIDGE TELEPHONE COMPANY, CAMDEN TELEPHONE & TELEGRAPH COMPANY, INC., NELSON BALL GROUND TELEPHONE COMPANY, AND QUINCY TELEPHONE COMPANY AGAINST HALO WIRELESS, INC., TRANSCOM ENHANCED SERVICES, INC. AND OTHER AFFILIATES FOR FAILURE TO PAY TERMINATING INTRASTATE ACCESS CHARGES FOR TRAFFIC AND FOR EXPEDITED DECLARATORY RELIEF AND AUTHORITY TO CEASE TERMINATION OF TRAFFIC

PROCEDURAL AND SCHEDULING ORDER

I. BACKGROUND

On June 14, 2011 TDS TELECOM on behalf of its subsidiaries Blue Ridge Telephone Company, Camden Telephone & Telegraph Company, Inc., Nelson-Ball Ground Telephone Company, and Quincy Telephone Company (collectively "TDS Telecom") and, pursuant to O.C.G.A. §§ 46-2-20, 50-13-11, 46-5-45, 46-5-163(a), 9-4-1 et. seq. and Commission Utility Rule 515-2-1-.12, filed a Complaint against Halo Wireless, Inc. ("Halo Wireless"), Transcom Enhanced Services, Inc. ("Transcom"), and such other affiliated companies as are involved in the delivery of traffic to TDS Telecom for termination that have failed and refused to pay applicable access charges.

TDS's requests for relief are as follows:

- a. TDS Telecom requests that the Commission issue a Cease and Desist Order *instante* prohibiting Halo Wireless from providing telecommunications services in the State of Georgia until such time as the Commission may hold a hearing on this matter.

Docket No. 34219
Procedural and Scheduling Order

EXHIBIT

C

- b. TDS Telecom requests that the Commission issue a Cease and Desist Order *instantly* prohibiting Transcom from operating any telephone line, plant, or system in the State of Georgia until such time as the Commission may hold a hearing on this matter.
- c. TDS Telecom requests that the Commission, after hearing, declare that the traffic sent to TDS Telecom by Halo Wireless for termination is predominantly, if not exclusively, originated by wire line carriers.
- d. TDS Telecom requests that the Commission, after hearing, Order Halo Wireless to pay all outstanding intrastate access charges including applicable interest and late payment charges within thirty (30) days of the entry of the Commission's Order.
- e. TDS Telecom requests that, if Halo Wireless fails to make payment in full in accordance with the Commission's Order, the Commission authorize TDS Telecom to cease termination of traffic from Halo Wireless to end user customers of TDS Telecom and further order, direct and require AT&T to block all traffic from Halo Wireless for termination to TDS Telecom end user customers as a result of Halo Wireless' failure to pay all outstanding intrastate access charges due and payable. Any costs incurred by AT&T to block this traffic shall be borne by Halo Wireless.
- f. TDS Telecom requests that the Commission immediately issue an order requiring Halo Wireless to issue a security bond in the amount of \$1,000,000 pending the outcome of the Commission decision in this proceeding. Based upon the actions of similar companies that were engaged in the business of access avoidance at the expense of Georgia's ILECs, TDS Telecom is concerned that, despite a finding by the Commission in favor of TDS Telecom, the likelihood that Halo Wireless will have the ability to pay is remote.

An original and fifteen copies of all filings, including testimony, briefs and proposed orders, shall be accompanied by an electronic version of the filing that shall be made on a CD using Microsoft Word ® format for text documents and Microsoft Excel ® for spread sheets. Under no circumstances should any electronic filing consist of more than four (4) files, including attachments. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington St., SW, Atlanta, Georgia 30334-5701.

II. LEGAL AUTHORITY FOR HEARING

This hearing will be held under the authority and jurisdiction conferred upon the Georgia Public Service Commission by O.C.G.A. §§ 46-2-20, 46-2-21, 46-5-45, 50-13-11 and the Georgia Telecommunications and Competition Development Act O.C.G.A. § 46-5-160 through 174. The Commission has general jurisdiction over providers of telecommunications services. O.C.G.A. § 46-2-20(a). The Commission administers Georgia laws on the certificates of authority to provide telecommunications service. O.C.G.A. § 46-5-163. The Commission may issue cease and desist orders to telecommunications carriers operating without the necessary

certificate. O.C.G.A. §§ 46-5-45, 46-5-163(a). The Commission is authorized to resolve complaints against a local exchange carrier. O.C.G.A. § 46-5-168(d). The Commission is authorized to, and has, promulgated rules for the issuance of a declaratory ruling. O.C.G.A. § 50-13-11 and Commission Rule 515-2-1-.12

III. PROCEDURAL SCHEDULE

July 21, 2011

All direct testimony must be pre-filed with the Commission by 4:00 p.m.

July 28, 2011

Rebuttal testimony must be pre-filed by 4:00 p.m.

August 4, 2011

Surrebuttal testimony must be pre-filed by 4:00 p.m.

August 9, 2011 Beginning at 10:00 a.m. the Commission will convene the hearings.

The Commission will begin by receiving the testimony of any public witnesses pursuant to O.C.G.A. § 46-2-59(g). Immediately following public witnesses, the Commission will hear applications to intervene and any objections thereto, and any motions concerning the parties' pre-filed testimony and other appropriate motions. Following these preliminary matters, the Commission will conduct hearings on the pre-filed testimony. The hearing shall take place in the Commission's hearing room located on the first floor of 244 Washington Street, SW, Atlanta, Georgia 30334-5701.

IV. STATUTES AND COMMISSION UTILITY RULES INVOLVED

O.C.G.A. § 46-5-45

Whenever any person is engaged in or is about to engage in the construction, operation, or acquisition of any telephone line, plant, or system without having secured a certificate of public convenience and necessity as required by Code Section 46-5-41, any interested person may file a complaint with the commission. The commission may, with or without notice, make its order requiring the person complained of to cease and desist from such construction, operation, or acquisition until the commission makes and files its decision on the complaint or until the further order of the commission. The commission may, after a hearing conducted after the giving of reasonable notice, make such order and prescribe such terms and conditions with respect thereto as are just and reasonable.

O.C.G.A. § 46-5-162(12)

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“Local interconnection services” means that part of switched interconnection service provided for the purpose of originating or terminating a call which originates and terminates within the local calling area.

O.C.G.A. § 46-5-162(19)

“Toll service” means the transmission of two-way interactive switched communications between local calling areas.

O.C.G.A. § 46-5-163(a)

A telecommunications company including a telecommunications services reseller shall not provide telecommunications services without a certificate of authority issued by the commission. The provisions of Code Section 46-5-45 shall apply in circumstances where a telecommunications company is providing telecommunications services without a certificate issued by the commission.

O.C.G.A. §§ 9-4-1 through 10 Declaratory Judgments

Commission Utility Rules

515-2-1-.06 Parties of Record

- (1) At the hearing on all applications, petitions and complaints, the Chairman of the Commission shall call for and enter the names of all parties desiring to become a party of record, either for or against the docketed case being heard. In the discretion of the Commission, parties having made written intervention prior to the hearing may be entered as a party of record.
- (2) The Commission may, in its discretion and for good cause shown, authorize the late filing, or entering, of a notice of intervention.
- (3) The Commission may, in its discretion, permit any person to present a statement of his position and views in sworn form, but such person shall not be entitled to receive copies of notices, motions, Orders or other pleadings and documents, filed or issued in the proceeding, unless otherwise directed by the Commission on good cause shown.

515-2-1-.12 Declaratory Rulings

- (1) **Form of Petition.** Each petition for a declaratory ruling pursuant to the Georgia Administrative Procedure Act shall be filed with the Commission and shall state:
- (a) The name and post office address of the petitioner;
 - (b) The full text of the statute, rule, order upon which a ruling is requested;
 - (c) A paragraph statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute or rule;

(d) Petitioner's contention, if any, as to the aforesaid applicability with citations of legal authorities, if any, that authorize, support, or require a decision in accordance therewith;
(e) A statement setting forth in detail the petitioner's interest in the matter and why and how the petitioner is uncertain or insecure with respect to his rights. The petition shall be verified under oath by, or in proper behalf of, the petitioner.

(2) **Service of Petition.** If the petition requests a declaratory ruling as to the applicability of an order of the Commission entered in a contested case, the petitioner shall serve a copy of the petition upon all other parties in that case. If the petitioner is a customer of a person or company regulated by the Commission which would be affected by the petition, the petitioner shall serve the person or company of which he is a customer. Any person or company so served has ten days in which to file briefs in support of, or in opposition to, the petition for a declaratory ruling.

(3) **Proceedings on Petition.** Unless the Commission so orders, no oral argument will be permitted. If there is no dispute with respect to any material fact, and unless the Commission so orders, no evidentiary hearings shall be held.

(4) **Informal Request for Interpretation and Rulings.** Any request presented in any manner other than in accordance with the provisions of this rule shall not be deemed to be filed as a Petition for Declaratory Ruling but shall be deemed an informal request for interpretation or ruling and shall be acted on as such. The provisions of this rule shall not be construed to preclude:

(a) Any person from requesting the Commission to interpret or otherwise rule upon the applicability of any pertinent statute or rule informally by personal appearance before the Commission, by letter or by telegram to the Commission; or

(b) The Commission from acting upon any such request whenever and however it deems appropriate, or from issuing any interpretive ruling without petition thereafter.

515-3-1-.02 Unjust Discrimination Forbidden.

(1) The several companies in the conduct of their intrastate business, shall afford to all persons equal facilities in the conduct of such business, without unjust discrimination in favor of, or against, any; and wherever special facilities are afforded to one patron, whether upon a special rate authorized by this Commission or otherwise, such company shall be bound to afford to any other patron, or patrons, under substantially similar circumstances, like facilities upon like rates.

515-3-1-.05 Free Service Forbidden.

No company or person subject to the jurisdiction of this Commission, shall, directly or indirectly, give or furnish any free or reduced rate service in this State, except as lawfully prescribed by the Commission.

515-6-1-.02 Certificate Required

No person shall construct or operate any line, plant or system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that the present or future public convenience

and necessity require, or will require, such construction, operation or acquisition. Any person engaged in the construction or operation of any line, plant, or system, or any extension thereof as of February 17, 1950, shall be entitled to receive such a certificate for the territory being served by such person on February 17, 1950, upon proper proof that such applicant is providing reasonably adequate service, if application herefore is made prior to February 17, 1951.

V. MATTERS ASSERTED

The subject of this proceeding will be the allegations set forth in the June 14, 2011 Complaint of TDS.

VI. INTERVENTION AND HEARING PROCEDURES

The following are certain procedures to which the parties should adhere with respect to this docket.

A. Intervention

Intervention Period

(1) Any person or party that is not automatically a party to this case as set forth above, has not already petitioned for intervention in this case, or any party on whom a statute does not confer an unconditional right to intervene, must file an application for leave to intervene not later than thirty (30) days after the issuance of this Procedural and Scheduling Order.

Application Requirements

(2) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed by O.C.G.A. § 46-2-59 for applications for leave to intervene, the applicant must:

- a. identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant, along with an explanation of why the identified intervening parties or intervening party will not adequately represent the applicant's interest; and
- b. state the applicant's present intention to submit testimony and by whom and on what subject. The requirements identified herein shall constitute obligation of the applicant or intervening party. Any objections to applications must be filed in conformance with O.C.G.A. § 46-2-59(d).

Late Applications for Intervention

(3) Any application for leave to intervene that is filed late must state the reason why such application was not timely submitted. Objections to late intervention application must be filed in conformance with the requirements of O.C.G.A. § 46-2-59(d).

Rulings on Intervention Applications

(4) The Commission will take up and rule on applications for leave to intervene at the first hearing date set in this docket.

B. Service

It shall be the responsibility of each party to serve copies of any documents filed with the Commission upon each party's representative, intervenor, and intervenor applicant. Furthermore, in the case of documents filed prior to the deadline for intervention established above, copies shall also be served upon each party of record recognized in Commission Docket No. 32235 according to the service list established in this docket.

C. Applications to intervene and Commission approval thereof are covered by O.C.G.A. § 46-2-59 and Commission Utility Rule 515-2-1-.06. Each applicant shall submit fifteen (15) copies of its application to intervene to the Commission along with an electronic version, addressed to:

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334-5701

C. Witnesses' Testimony

(1) Summations of testimony will take no longer than 15 minutes or, at the discretion of the Commission, no longer than 30 minutes.

(2) Summations should be limited to testimony and exhibits in the pre-filed testimony.

(3) Demonstrative handouts intended to be used during summations of the pre-filed testimony or in opening or closing statements, if applicable, must be pre-filed at least five (5) days prior to the hearing and must be limited to the scope of the testimony and exhibits in the pre-filed testimony.

(4) Except for good cause shown, corrections to testimony must be pre-filed at least five (5) days prior to the hearing.

(5) In the absence of a valid objection made and sustained to prefiled testimony, the prefiled testimony and exhibits, with corrections, will be admitted into the record as if orally given prior to the witness' summation, subject to a motion to strike after admission or other relevant objection.

(6) Where the testimony of a panel of witnesses is presented, cross-examination may either be addressed to the panel, in which case any member of the panel may answer, or cross-examination may be addressed to an individual panel member, in which case that panel member shall give the answer.

(7) Motions to strike any portion of pre-filed testimony must be filed at least two days prior to the hearing.

D. Hearing Exhibits

For the record in all hearings, it shall be the responsibility of the party sponsoring any exhibits to see that the Hearing Reporter and all parties of record, plus the Commissioners, receive copies of the hearing exhibits at the time of introducing the exhibits at the hearings.

VII. DISCOVERY

This proceeding also shall be deemed "complex litigation" as that phrase is used in O.C.G.A. § 9-11-33(a). Discovery procedures shall accordingly apply. The Commission authorizes the Staff to issue discovery pursuant to O.C.G.A. 46-2-57(a). The Staff may conduct depositions and use any other methods of formal and informal discovery in this docket. The use of any informal discovery methods shall not augment or abridge existing discovery rights and responsibilities. Responses to Staff discovery should be provided contemporaneously to all parties. To the extent that such responses include information that an applicant deems trade secret, any disclosure of that information to other interested parties should be handled consistent with the Commission's trade secret rule and any confidentiality agreements that the applicant may have with the interested parties.

VIII. RIGHTS OF PARTIES

The parties have the following rights in connection with this hearing:

- (1) To respond to the matters asserted in this document and to present evidence on any relevant issue;
- (2) To be represented by counsel at its expense;

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- (3) To subpoena witnesses through the Commission by filing requests with the Executive Secretary of the Commission; and
- (4) Such other rights as are conferred by law and the rules and regulations of the Commission.

WHEREFORE IT IS ORDERED, that the Commission initiates this proceeding, subject to the conditions and procedures set forth herein.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 23rd day of June, 2011.

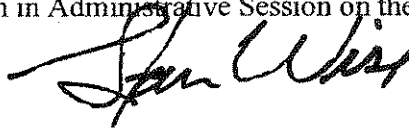


Reece McAlister

Executive Secretary

6-28-11

Date



Stan Wise

Chairman

6-28-11

Date

EOD

11/01/2011

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

IN RE:

HALO WIRELESS, INC.,

Debtor.

§
§
§
§
§

Case No. 11-42464
(Chapter 11)

ORDER DENYING MOTIONS FOR STAY PENDING APPEAL

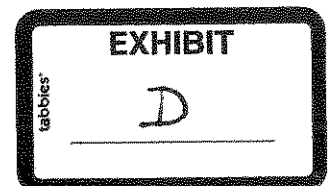
Now before the Court are three motions to stay pending appeal (collectively, the “Stay Motions”) filed by the debtor on October 28, 2011. Each of the Stay Motions consists of a request for a stay pending the resolution of the debtor’s appeals from the Court’s determination that regulatory proceedings 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