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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: :
COMPLAINT OF :
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 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

DOCKET NO.: 1100108

OPPOSITION TO MOTION TO AMEND COMPLAINT

NOW COME Halo Wireless, Inc. ("Halo") and Transcom Enhanced Services, Inc. ("Transcom"), subject to and without waiving their respective motions to dismiss the above proceeding due to the Tennessee Regulatory Authority's ("TRA") lack of jurisdiction¹ over this matter, and oppose the Motion to Amend Complaint ("Motion") filed by the named complainants herein, (collectively, the "Complainants"), as follows:

A. INTRODUCTION

1. The Complainants' Motion should be denied and the Complainants' original complaint ("Original Complaint") and proposed amended complaint ("Amended Complaint")

¹ Nothing in this Opposition is intended to address, and shall not be interpreted to address by way of admission or denial, any of the Complainants' factual contentions or contentions on the merits. The TRA cannot and should not reach any of these asserted facts or contentions and cannot take up the substantive merits. No answer is or can be required. The TRA must find that its only permissible course of action is to dismiss for want of jurisdiction.

should be dismissed because the Amended Complaint, like the Original Complaint, still asserts counts and requests for relief over which the TRA has no jurisdiction. In the alternative, the Complainants' Motion should be denied and the Complainants should be ordered to replead as set forth below, because although the Amended Complaint, as amended, purports to address the limitations imposed on this proceeding by the automatic stay under 11 U.S.C. § 362 and ordered by the Bankruptcy Court, the Amended Complaint now includes causes of action and requests for relief that exceed the scope of permissible activities under the Bankruptcy Court's Order and therefore would result in violations of the automatic stay. The causes of action and requests for relief in the Amended Complaint should also not be allowed because they violate the Federal Communications Act.

B. BACKGROUND

2. Complainants filed their Original Complaint before the TRA on July 7, 2011. Halo and Transcom filed motions to dismiss the Original Complaint on August 5, 2011 (collectively, the "Motions to Dismiss"). However, on August 8, 2011, Halo filed its voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "Bankruptcy Court"), Case No. 11-42464 (the "Bankruptcy Case"). Halo filed its Suggestion of Bankruptcy in this case on August 10, 2011, asserting that the automatic stay imposed under 11 U.S.C. § 362 extended to both Halo and Transcom because the claims and requests for relief against Transcom were inextricably intertwined with the claims against Halo and that the relief sought by Complainants against Transcom effectively sought relief from Halo and affected the bankruptcy estate of Halo in contravention of the automatic stay.

3. Shortly after the filing of the Bankruptcy Case, the Complainants and various other similarly situated companies filed motions in Halo's Bankruptcy Case requesting that the Bankruptcy Court (a) determine that the automatic stay provided by 11 U.S.C. § 362 is inapplicable, pursuant to 11 U.S.C. § 362(b)(4), to the various state commission proceedings against Halo across the country, including the present case, or, in the alternative, (b) to modify the automatic stay for cause, pursuant to 11 U.S.C. § 362(d)(1), to allow the proceedings to proceed before the respective state commissions in which they were pending (collectively the "Stay Motions"). Halo filed a timely objection to each of the Stay Motions.

4. On October 26, 2011, the Bankruptcy Court ultimately issued orders (the "Stay Orders") determining that the various state commission proceedings could proceed to the extent necessary for the respective commissions to determine whether they have jurisdiction and, to the extent that they find that they do, to make findings pursuant to their asserted police and regulatory powers regarding any perceived violations of state law; provided, however, that the state commissions could not (a) liquidate the amount of any claim against the Debtor; or (b) take any action that affected the debtor-creditor relationship with any creditor or potential creditor of the Debtor (collectively, the "Reserved Matters"). In other words, the Reserved Matters continue to be expressly stayed under 11 U.S.C. § 362 and the orders of the Bankruptcy Court.

C. STANDARDS FOR MOTION TO AMEND

5. The granting or denying of a motion to amend under Tennessee Rule of Civil Procedure 15.01 is within the sound discretion of the trial court. *Ne. Knox Util. Dist. v. Stanford Const. Co.*, 206 S.W.3d 454, 459 (Tenn. Ct. App. 2006). In exercising its discretion, the trial court should consider several factors, including: (1) whether undue delay will occur as a result of the amendment, (2) whether the opposing party has sufficient notice, (3) whether the amending

party is acting in bad faith, (4) whether the moving party has failed to cure deficiencies in previous amendments, (5) whether the opposing party will suffer undue prejudice, and (6) the futility of the amendment. *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 384 (Tenn. Ct. App. 2006). “Of these factors, the most important is the proposed amendment's potential prejudicial effect on the opposing party.” *Id.*

D. THE COMPLAINANTS’ MOTION SHOULD BE DENIED

6. In their Amended Complaint, Complainants have removed a number of allegations and requests for relief and now claim that their Amended Complaint complies with the Stay Order. Obviously, Halo and Transcom do not object to the removal of allegations and requests for relief. However, in their Amended Complaint, the Complainants still request, among other things, that the TRA issue a declaratory ruling that intrastate wireline toll traffic and wireless interMTA traffic sent to them by Halo for termination to the Complainants’ end users is subject to intrastate access charges.” (Count I). Complainants also now seek a “Cease and Desist Order” to prohibit both Halo Wireless and Transcom from providing telecommunications service in the State of Tennessee without a certificate of authority until such time as the TRA may hold a hearing on this matter.” (Count II). Lastly, Complainants have added new requests for relief (6 and 7) which seek the following:

6. Authorize the RLECs to cease termination of traffic from Halo Wireless and Transcom to end user customers of the RLECs and further order, direct and require AT&T to block all traffic from Halo Wireless and/or Transcom for termination to the RLECs' end user customers as a result of Halo Wireless/Transcom's 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 and/or Transcom; and

7. Grant such other and further relief to which they may be entitled, including reasonable attorney's fees and costs.

Amended Complaint, p. 15.

7. Halo and Transcom object to the retention or addition of the above counts and requests for relief, including any related allegations in the Amended Complaint, and assert that the Complainants' Motion should be denied because, even as amended, all of the above described counts, requests for relief and related allegations, fail to correct the fundamental deficiency in Complainants' Original Complaint, i.e. the TRA's lack of jurisdiction over the ultimate relief sought. The above described counts, requests for relief, and indeed this entire proceeding, rest on the faulty assumptions that: a) Halo lacks authority to provide the services that give rise to the purported traffic; b) Halo's traffic is not "wireless" or "CMRS" because it is claimed to originate on other networks; and c) Transcom is not an enhanced service provider whose traffic to Halo is exempt from access charges despite four rulings from courts of competent jurisdiction expressly ruling that Transcom is an enhanced service provider. The Complainants implicitly ask the TRA to investigate the scope of Halo's federal authorization, interpret Halo's federal licenses in light of the Complainants' alleged facts, ignore Transcom's status as enhanced service provider and then conclude that Halo is somehow subject to state-level jurisdiction under *state law* because of perceived exceptions to binding and jurisdictional *federal law* that expressly prohibits state regulation of market entry and rates. The Complainants assert that their *intrastate* tariffs apply to this traffic, and that Halo is somehow an intrastate access customer. To reach this conclusion, however, the complainants are necessarily asserting that the traffic is not "wireless" or "CMRS" and is *also* not "intraMTA" or otherwise *not* "non-access" traffic as defined by *FCC rules*. Fundamentally, the Complainants are arguing that Halo has no right to rely on Transcom's four federal court rulings

8. The allegations, claims and requests for relief as against Halo are purely and simply an attempted collateral and state-level attack on Halo's federal authorizations and the

rulings finding that Transcom is an enhanced service provider. The Complainants are necessarily asking the TRA to act in the place of the FCC and find exceptions to binding and exclusive federal rules that would give an opening for state-level regulation and jurisdiction, which they then of course ask the TRA to exercise in punitive and protective fashion.

9. The TRA, however, cannot entertain the Complainants' pleas for action. The TRA lacks jurisdiction over the subject matter and jurisdiction over Halo's person, property and business. Only the FCC can resolve the threshold questions that could, possibly, then lead to the exercise of state-level jurisdiction and power. The Complainants must take their complaint to the FCC, for the FCC has exclusive and primary original jurisdiction. Because the Amended Complaint still does not cure the TRA's lack of jurisdiction over the relief sought by Complainants, it is improper and futile. *Newcomb*, 222 S.W.3d at 384. Accordingly, the Motion should be denied and this entire case must be dismissed for the reasons set forth herein and in the Motions to Dismiss.

10. In the alternative, even if the TRA asserts jurisdiction over this case, it must deny Complainants' Motion because the retention or addition of the above referenced counts, requests for relief, and related allegations expressly violates the automatic stay, the orders of the Bankruptcy Court, and the Communications Act and is therefore both prejudicial and in bad faith. Specifically, Request for Relief No. 6, which was added to the Amended Complaint, seeks authorization for the Complainants to block traffic from Halo or Transcom based on alleged failure to pay access charges, which Halo and Transcom assert are not due. *See* Amended Complaint p. 15. Request for Relief No. 6 violates the Stay Orders because by tying blocking to non-payment of access charges, Complainants are seeking injunctive relief based on a liquidation

of access charges they claim are due. As noted above, liquidation of claims against Halo was expressly prohibited by the Stay Orders.

11. Further, as set forth more fully on pages 20-23 of Halo's Motion to Dismiss on file herein, Request for Relief No. 6 is improper and in bad faith because blocking by a carrier without advance authorization from the FCC is an unjust and unreasonable practice under section 201(b) of the Communications Act and violates the requirements of the FCC's rules implementing section 214 of the Communications Act (47 C.F.R. §§ 63.60(b)(5), 63.62(b) and (e) and 63.501). Because blocking is improper without the FCC's permission and without following the FCC's rules, the TRA has no jurisdiction to authorize or allow the blocking requested by Complainants. Accordingly, any requests for relief and related allegations regarding requests or grounds for blocking in Complainants' Complaint should not be allowed.

12. Request No. 6 also violates the Stay Orders, and should not be allowed, because Halo's federal license to interconnect and operate as a CMRS provider is significant property of its bankruptcy estate and any request to block traffic impairs the exercise of that license to the detriment of the estate. Request for Relief No. 6 further violates the Stay Orders because it seeks to allocate any costs incurred by AT&T to block traffic to Halo and/or Transcom. *See Id.* As noted above, the Stay Orders expressly prohibit taking any action that affects "the debtor-creditor relationship with any creditor or potential creditor of the Debtor." AT&T is a creditor of Halo by virtue of the interconnection agreement between Halo and AT&T. Any request to vary the terms of the interconnection agreement, or the rights, responsibilities, or liabilities of Halo to AT&T clearly affects the debtor-creditor relationship and is stayed. The addition of Request for Relief No. 7, which includes a request for attorney's fees and costs, also clearly violates the order because it seeks to liquidate a claim against Halo. *See Amended Complaint p. 15.*

13. The Complainants' addition of the above described counts and requests for relief when they are so clearly in violation of the Stay Orders and the Communications Act demonstrates that the Complainants are acting in bad faith. At a minimum, allowing these counts, requests for relief, and the related allegations will prejudice Halo and Transcom by subjecting them to claims over which the TRA has no jurisdiction or which have already been stayed and by forcing Halo and Transcom to expend further time and resources to seek relief from the Bankruptcy Court or the FCC to prevent proceeding on these claims. Accordingly, the Amended Complaint is improper and the Complainants' Motion should be denied. *Newcomb*, 222 S.W.3d at 384.

WHEREFORE, premises considered, Halo and Transcom pray that the Complainants' Motion be denied and that this case be dismissed for lack of jurisdiction. In the alternative, if the TRA asserts jurisdiction over this matter, Halo and Transcom pray that the Complainants' Motion be denied and the Complainants be ordered to remove any allegations, causes of action, and requests for relief that violate the Stay Orders or the Communications Act.

Respectfully submitted,

Paul S. Davidson by Robert E. Burton
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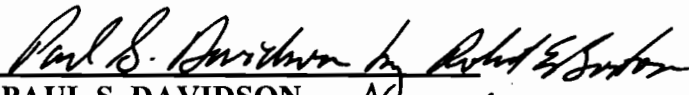
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Opposition to Motion to Amend Complaint* 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 1st day of December, 2011:

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