

regarding the automatic stay (the “Stay Orders”)¹ in an attempt to circumvent the fact that their efforts to unilaterally block traffic from Halo are improper and cannot proceed without further authorization from the Bankruptcy Court.

2. In particular, Respondents argue that the Stay Orders do not stay the Respondents’ self-help efforts to unilaterally block Halo’s traffic under Missouri’s ERE rules or this proceeding filed in response to Respondents’ proposed blocking efforts. Indeed, Respondents claim that the Bankruptcy Court has ruled that this Commission can entertain the ERE proceedings and not be in violation of the stay. This claim is demonstrably wrong.

3. The Stay Orders do not expressly mention, much less authorize, any and every proceeding brought before the Commission under ERE rules or other statutes. To the contrary, the Stay Orders expressly exclude from their scope actions for “liquidation of the amount of any claim against the Debtor” or “any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor (collectively, the “Reserved Matters”).”

4. Respondents’ assertion that their blocking requests do not affect any debtor-creditor relationship is cannot be reconciled with the facts. The Respondents’ clearly seek to affect the debtor/creditor relationship between Halo and AT&T by requesting blocking of the performance of AT&T under the ICA between AT&T and Halo. Moreover, the misinterpretation of the law which underlies the non-AT&T Respondents’ demand for blocking is apparently intended to create a new debtor-creditor relationship between the non-AT&T Respondents and Halo. Thus, the blocking notices and Halo’s Complaint clearly relate to a “reserved matter.”

¹ True and correct copies of the Stay Orders are attached hereto as Exhibits A and B.

5. This is significant because, the Stay Orders also require that a party seeking to pursue a “reserved matter” first seek relief from the Bankruptcy Court but only after “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.” *See* Exhibit A, p. 2, ¶ 2 and Exhibit B p. 2, ¶ 2. In other words, contrary to the arguments made by Respondents, the parties seeking to pursue this reserved matter must seek a determination on the automatic stay from the Bankruptcy Court, not Halo. Thus, it does not matter that Halo’s Notice of Violation of Stay filed with the Bankruptcy Court does not request a determination on the stay, because it is incumbent on the Respondents to seek relief from the stay on this reserved matter. Also, it should be noted that the automatic stay is, by statute, “automatic.” As a result, Halo is not requesting this Commission to impose a stay beyond the automatic stay already imposed by 11 U.S.C. § 362 and the Stay Orders. Instead, Halo is merely asking the Commission to abide by the automatic stay unless and until the Respondents to seek and obtain relief from the stay in the Bankruptcy Court.


6. Moreover, contrary to Respondents’ assertions, the rulings by the Bankruptcy Court and other state commissions regarding whether other state commission proceedings involving blocking requests are subject to the automatic stay have no bearing on the application of the automatic stay to these proceedings. The instant proceeding is the first and only proceeding involving Halo to be instituted as a result of adverse parties invoking self-help remedies to block before the proceeding to contest the blocking request was filed with any commission. Indeed, the ERE rules purport to require the blocking notice as a prerequisite to filing a complaint in response and allow invocation of the blocking without an order issued by

the Commission. This is completely contrary to the intent of the Bankruptcy Court, which prefaced the entry of the Stay Orders on its finding that the prior state commission proceedings in question were, in fact, proceedings brought by governmental units to enforce those units' regulatory powers. The invocation of self-help remedies, even when claimed to be authorized under state rules, is not, and cannot be considered a proceeding brought by a governmental unit to enforce that unit's regulatory power. Further, the ERE rules cannot change the scope of the automatic stay under federal bankruptcy law or the scope of the Stay Orders. Accordingly, this action should be stayed until Respondents seek and obtain a determination on the application of the automatic stay.

WHEREFORE, Complainant Halo Wireless, Inc. respectfully requests that this matter be stayed until such a time that the Respondents obtain relief from the Bankruptcy Court allowing them to proceed.

Respectfully submitted this 9th day of April, 2012.

Respectfully submitted,

By: 
DANIEL R. YOUNG
Missouri State Bar No. 34742
LOUIS A. HUBER, III
Missouri State Bar No. 28447
SCHLEE, HUBER, McMULLEN & KRAUSE, P.C.
4050 Pennsylvania, Suite 300
P.O. Box 32430
Kansas City, MO 64171-5430
Telephone: (816) 931-3500
Facsimile: (816) 931-3553

STEVEN H. THOMAS

(petition for leave to appear and participate
forthcoming)

Texas State Bar No. 19868890

TROY P. MAJOUÉ

(petition for leave to appear and participate
forthcoming)

Texas State Bar No. 24067738

JENNIFER M. LARSON

Texas State Bar No. 24071167

(petition for leave to appear and participate
forthcoming)

MCGUIRE, CRADDOCK & STROTHER, P.C.

2501 N. Harwood, Suite 1800

Dallas, TX 75201

Telephone: (214) 954-6800

Facsimile: (214) 954-6850

W. SCOTT MCCOLLOUGH

(petition for leave to appear and participate
forthcoming)

Texas State Bar No. 13434100

MCCOLLOUGH|HENRY, P.C.

1250 S. Capital of Texas Hwy,

Bldg 2-235

West Lake Hills, TX 78746

Telephone: (512) 888-1112

Facsimile: (512) 692-2522

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been filed with the Missouri Public Service Commission electronic filing system and has been e-mailed to the following counsel of record this 9th day of April, 2012:

Craig S. Johnson
Johnson & Sporleder, LLP
304 E. High Street, Suite 200
P.O. Box 1670
Jefferson City, MO 65102
cj@cjlaw.com

Leo J. Bub
General Attorney
AT&T Missouri
One AT&T Center, Room 3518
St. Louis, MO 63101
leo.bub@att.com

Office of the Public Counsel
Lewis Mills
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

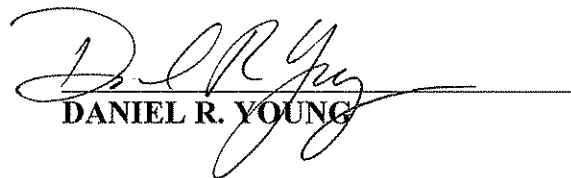
AT&T Missouri
Jeffrey E Lewis
One AT&T Center, Room 3520
St. Louis, MO 63101
jeffrey.e.lewis@att.com

AT&T Missouri
Robert Gryzmala
909 Chestnut Street
St. Louis, MO 63101
robert.gryzmala@att.com

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov

Brian McCartney
William R. England III
Brydon, Swearingen & England
312 E. Capital Avenue
P.O. Box 456
Jefferson City, MO 65102
bmccartnery@brydonlaw.com
trip@brydonlaw.com

Missouri Public Service
Commission
Cully Dale
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
cully.dale@psc.mo.gov


DANIEL R. YOUNG

EOD

10/26/2011

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

**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:

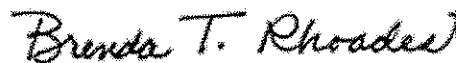
- A. liquidation of the amount of any claim against the Debtor; or
- B. any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor (collectively, the "Reserved Matters"); and it is further

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



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.