

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

Exhibit B

IN RE:	§	
HALO WIRELESS, INC.	§	
_____	§	
	§	
HALO WIRELESS, INC.	§	Case No. 4:11-mc-55
	§	
v.	§	
	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY d/b/a AT&T Arkansas, et al.	§	

ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

Before the Court is Movant’s Emergency Motion for Stay Pending Appeal of AT&T Order (Doc. No. 1). Upon order of the Court, Respondants filed an expedited response on Tuesday, November 29, 2011. Having considered the motion, the response, and the applicable law, the Court DENIES the motion. In view of this ruling, the hearing set for Thursday, December 1, 2011 is CANCELLED.

I. BACKGROUND

The underlying issue in this case involves technical questions arising out of the wireless telephone industry. Movant Halo Communications, Inc. and more than fifty of its competitors dispute the classification applicable to Halo and the services it provides. These classifications impact whether Halo is properly operating under its federally issued license and also what amount Halo must pay for access to the wireless network.

The underlying dispute involves multiple proceedings, including twenty state regulatory actions brought by Halo’s competitors (respondents in this and the related appeals), a civil case pending before this Court (*Halo Wireless, Inc. v. Livingston Tel. Co.*, No. 4:11-cv-359), and a bankruptcy proceeding in the Eastern District of Texas, from which this appeal is taken. The issues at the heart of this appeal address questions of the interplay between these various proceedings and the authority and jurisdiction of the

federal and states entities involved.

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Upon Halo’s filing for bankruptcy protection on August 8, 2011, an automatic bankruptcy stay was imposed in the other proceedings listed above. But the bankruptcy court recently lifted the automatic stay as to the state regulatory actions, which allows those twenty actions to proceed.¹ Recognizing the lack of controlling precedent for its decision to lift the automatic stay, the bankruptcy court certified its decision for immediate appeal to the Fifth Circuit. Finally, the bankruptcy court denied Halo’s motion to stay its order pending appeal. It is the last of these orders—the denial of the stay pending appeal—that is now under review by this Court.

II. LEGAL STANDARD

This Court has jurisdiction to consider this appeal pursuant to 28 U.S.C. § 158(a). The decision whether to grant a stay pending appeal is left to the sound discretion of the Court whose order is being appealed, in this case, the bankruptcy court. *Prudential Mortg. Capital Co., L.L.C. v. Faidi*, Nos. 10–20134, 10–20423, 2011WL2533828, at *4 (5th Cir. Jun. 24, 2011) (per curiam). This Court reviews the bankruptcy court’s decision for an abuse of discretion. *Id.*; see also *Webb v. Reserve Life Ins. Co. (In re Webb)*, 954 F.2d 1102, 1103–04 (5th Cir. 1992) (stating that when reviewing the case, the “district court functions as an appellate court and applies the same standard of review generally applied in federal appellate courts.”).

Under the abuse of discretion standard, the district court must accept the bankruptcy court’s findings of fact unless clearly erroneous and examine *de novo* the conclusions of law. See *Carrieri v. Jobs.com Inc.*, 393 F.3d 508, 517 (5th Cir. 2004); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d

¹The bankruptcy court limited the reach of the state regulatory bodies, noting that the order does not allow “liquidation of the amount of any claim against the Debtor” or “any action which affects the debtor-creditor relationship between the [Halo] and any creditor or potential creditor.”

1303, 1307–08 (5th Cir. 1985); Fed. R. of Bank. P. 8013. Under the clearly erroneous standard, the court will only reverse if, after reviewing all of the evidence in the record, the court is “left with the definite and firm conviction that a mistake has been made.” *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 565 (5th Cir. 1995) (quoting *Allison v. Roberts (In re Allison)*, 960 F.2d 481, 483 (5th Cir. 1992)).

III. ANALYSIS

The Court has fully considered the bankruptcy court’s order denying stay pending appeal. The bankruptcy court properly addressed and weighed each of the four relevant factors: (1) likelihood of success on the merits, (2) showing of irreparable injury if the stay is not granted, (3) whether the stay would substantially harm the other parties, and (4) whether the stay would serve the public interest. *Arnold v. Garlock, Inc.*, 278 F.3d 426, 439–42 (5th Cir. 2001). For the reasons stated below, the Court finds that the bankruptcy court did not abuse its discretion.

The bankruptcy court made several factual findings in considering Halo’s motion to stay pending appeal. First, the bankruptcy court found that Halo would not suffer irreparable damage in absence of the stay. The bankruptcy court also found the requested stay would substantially harm the other parties and would not serve the public interest. Specifically, the bankruptcy court noted that a stay would demand the other parties to continue providing services to Halo, the debtor in the bankruptcy proceedings, and also would bind the hands of the state public utility commission, which are charged with regulating the telecommunications industry. Halo has not demonstrated that the bankruptcy court’s factual findings are clearly erroneous, thus the Court will not disturb them on appeal.

Finally the bankruptcy court determined that Halo did not demonstrate a substantial likelihood of success on the merits. Halo’s motion discusses in depth its potential for success before the Fifth Circuit. This Court recognizes—as did the bankruptcy court—that no Fifth Circuit precedent exists for the bankruptcy court’s underlying decision. Halo suggests that this unresolved legal question eliminates the


need to seriously weigh the remaining factors. But the Fifth Circuit has been clear that all the factors must be considered. *See, e.g., Ruiz v. Estelle*, 666 F.2d 854, 856–57 (5th Cir. 1982). Based on the balance of all four relevant factors, any potential for Halo’s success on the merits (due to the unresolved question of law) is significantly outweighed by the other three factors.

IV. CONCLUSION

For the reasons stated above, the Court denies Movant’s Emergency Motion for Stay Pending Appeal of AT&T Order (Doc. No. 1). It is further ordered that the hearing set for Thursday, December 1, 2011 is CANCELLED.

It is SO ORDERED.

SIGNED this 30th day of November, 2011.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE