

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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SEP 14 2011

PUBLIC SERVICE
COMMISSION

In the Matter of:

BELLSOUTH
TELECOMMUNICATIONS, LLC d/b/a
AT&T KENTUCKY,

Complainant,

v.

HALO WIRELESS, INC.,

Defendant

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§
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Case No. 2011-00283

NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE that a Notice of Removal of the above entitled action from the Kentucky Public Service Commission, to the United States District Court for the Eastern District of Kentucky, Frankfort Division was duly filed on the 9th day of September, 2011 by Halo Wireless, Inc. pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure in the United States District Court for the Eastern District of Kentucky, Frankfort Division. A true and correct copy of such Notice of Removal is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure, no further action can be taken in the above captioned proceeding unless otherwise ordered by the district court or a subdivision thereof.

Respectfully submitted this 9th day of September, 2011.



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Counsel for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Removal* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record and other designated contact individuals on this the 9th day of September, 2011:


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COUNSEL FOR KENTUCKY PUBLIC SERVICE COMMISSION

A handwritten signature in black ink, appearing to read 'Katherine W. Ross', written over a horizontal line.

Katherine W. Ross

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

RECEIVED

SEP 14 2011

PUBLIC SERVICE
COMMISSION

IN RE:

HALO WIRELESS, INC.,

DEBTOR.

§
§ Case No. 11-42464-Btr-11
§
§ Pending in the United States
§ Bankruptcy Court for the Eastern
§ District of Texas, Sherman Division

BELLSOUTH
TELECOMMUNICATIONS, LLC d/b/a
AT&T KENTUCKY,

§
§
§
§ Civil Action No. _____

V.

HALO WIRELESS, INC.

§
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§
§ Removed from Case No.: 2011-00283,
§ Pending Before The Commonwealth
§ of Kentucky Public Service
§ Commission
§
§

NOTICE OF REMOVAL

COMES NOW, Halo Wireless, Inc. (the "Debtor"), the debtor and debtor-in-possession in the above referenced bankruptcy case and file this Notice of Removal as follows:

I. Background

1. On July 26, 2011 the Debtor was named as defendant in the lawsuit styled *BellSouth Telecommunications, LLC d/b/a AT&T Kentucky* (the "Complainant") against *Halo Wireless, Inc.* pending before the Commonwealth of Kentucky Public Service

Commission (the “Kentucky PSC”) under Case No.: 2011-00283 (the “PSC Proceeding”).

2. In the PSC Proceeding, the Complainant seeks declaratory rulings reclassifying the nature of the wireless telecommunication traffic Debtor has transmitted, declaring that Debtor’s business is illegal, awarding Complainant amounts it claims Debtor owes for its transmission of traffic, and authorizing Complainant to terminate the transmission of Debtor’s traffic.

3. The Debtor asserts that the Kentucky PSC does not have jurisdiction and cannot proceed with the PSC Proceeding because each of the claims for relief asserted by the Complainant implicate federal questions that fall within: (a) the FCC’s exclusive original jurisdiction over market entry (licensing) of radio based services, (b) the FCC’s exclusive original jurisdiction and power to prescribe rules relating to the process for and rules governing “interconnection” between radio service providers and local exchange carriers, (c) the FCC’s exclusive original jurisdiction over market entry to provide interstate communications services by wire and/or radio, and/or (d) the FCC’s exclusive original jurisdiction to prescribe “compensation” terms governed by 47 U.S.C. §§ 201 and 251(b)(5), (with regard to interstate communications) and 47 U.S.C. § 251(g). The FCC is the Congressionally-mandated “first decider” for these issues. *See American Electric Power Co., Inc., et al. v. Connecticut et al*, No. 10-174, _ U.S. _, slip op. at 13 (June 20, 2011).

4. On August 8, 2011 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the

Eastern District of Texas, Sherman Division, commencing the above referenced bankruptcy case which bears Case No. 11-42464 (the “Bankruptcy Case”). Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor in possession.

5. No trustee or examiner has been appointed in the Debtor’s Chapter 11 bankruptcy proceeding, nor has a creditors’ committee or other official committee been appointed pursuant to 11 U.S.C. § 1102.

6. On August 10, 2011, the Debtor filed a Suggestion of Bankruptcy with the Kentucky PSC notifying the Kentucky PSC and all parties to the PSC Proceeding that the Debtor had filed for bankruptcy and that the provisions of Bankruptcy Code Section 362 (the automatic stay) stayed any further action in the PSC proceeding. Neither the Complainant nor the Kentucky PSC has obtained relief from the automatic stay.

II. Authority for Removal under 28 U.S.C. §1452

7. The PSC proceeding may be removed to this Court pursuant to 28 U.S.C. §1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. §1452(a) (emphasis added).

Based on the language of section 1452, a party may remove any “civil action” over which a Court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has original jurisdiction over all civil actions “arising under title 11, or arising in or related to cases under Title 11”.

8. The PSC Proceeding is related to the Debtor's Bankruptcy Case within the meaning of 28 U.S.C. § 1334 because the claims for relief asserted by the Complainant therein seek to determine amounts the Debtor allegedly owe the Complainant and more importantly challenges the Debtor's right to operate its business, including as a debtor-in-possession under the Bankruptcy Code.

9. The PSC Proceeding is a "civil action" within the meaning of 28 U.S.C. § 1452 because: a) the PSC Proceeding is a private party dispute between the Complainant and the Debtor in which the Complainant seek monetary damages and injunctive relief; and b) the PSC Proceeding is not a civil action by the Commonwealth of Kentucky or other governmental unit to enforce such governmental unit's police or regulatory power. The Kentucky PSC is merely acting as a judicial tribunal over the private civil action between the Complainant and Debtor.

10. Based on the foregoing, the PSC Proceeding may be removed to this Court pursuant to 28 U.S.C. § 1452.

III. All Requirements for Removal Have Been Met and Removal to this Court is Proper

11. This Notice of Removal is timely pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure ("FRBP") because the Debtor filed this Notice of Removal with this Court within ninety (90) days of entry of the order for relief under the Bankruptcy Code and/or within ninety (90) days of the Petition Date because the commencement of a voluntary chapter 11 proceeding constitutes an order for relief. 11 U.S.C. §301(b).

12. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).

13. The United States District Court for the Eastern District of Kentucky, Frankfort Division, is the proper court in which to remove this action pursuant to 28 U.S.C. § 1452 and FRBP 9027 because the PSC Proceeding is pending in this district and division.

14. Written notice of the filing of this Notice of Removal and a copy of this Notice of Removal are being served upon the Complainant through their counsel of record and will be filed with the Clerk of the Kentucky PSC.

15. True and correct copies of the pleadings and other documents on file in the PSC Proceeding are attached hereto as follows:

<u>Exhibit</u>	<u>Date</u>	<u>Filing</u>
1.	07/26/11	Complaint
2.	07/29/11	Public Service Commission Letters
3.	08/11/11	Suggestion of Bankruptcy, Notice of Stay, and Notice of Extensions Under 11 U.S.C. §108

16. The Debtor has not heretofore sought similar relief regarding the removal of the PSC Proceeding.

IV. ADOPTION AND RESERVATION OF DEFENSES

17. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) improper venue; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available under applicable state or federal law, or otherwise, which rights are expressly reserved.

18. Further, nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights and protections under the automatic stay provided pursuant to Bankruptcy Code Section 362 and any other provision of the Bankruptcy Code, which rights and protections are expressly reserved.

WHEREFORE the Debtor hereby removes the PSC Proceeding to the United States District Court for the Eastern District of Kentucky pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted this 9th day of September, 2011.

Respectfully submitted,

/s/ Katherine W. Ross

Katherine W. Ross

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