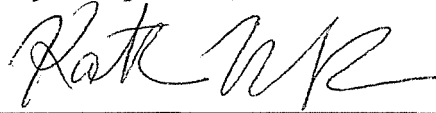


in the above captioned proceeding unless otherwise ordered by the district court or a subdivision thereof.

Respectfully submitted this 9th day of September, 2011.



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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:

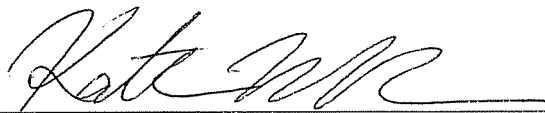
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PUBLIC SERVICE
COMMISSION

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

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

IN THE MATTER OF:

BALLARD RURAL TELEPHONE COOPERATIVE
CORPORATION, INC., ET AL.

COMPLAINANTS

v.

BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T KENTUCKY

DEFENDANT

§ Civil Action No. _____

AND

BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T KENTUCKY

THIRD-PARTY COMPLAINANT

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

v.

HALO WIRELESS, INC.

THIRD-PARTY DEFENDANT

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 May 24, 2011, several Rural Local Exchange Carriers¹ (collectively, the “Complainant”) filed a formal complaint against BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (AT&T) in the lawsuit styled *Ballard Rural Telephone Cooperative Corporation, Inc., et al., v. BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky* pending before the Commonwealth of Kentucky Public Service Commission (the “Kentucky PSC”) under Case No.: 2011-00199 (the “PSC Proceeding”).

2. AT&T filed its answer on July 15, 2011, and on July 19, 2011, AT&T filed a motion for leave to file a third-party complaint and third-party complaint against Debtor (the “Motion for Leave”). On August 5, 2011, the Kentucky PSC granted AT&T’s Motion for Leave, and thus made Debtor a third-party defendant in the PSC Proceeding.

3. In the PSC Proceeding, the Complainants effectively seek declaratory rulings reclassifying the nature of the wireless telecommunication traffic Debtor has transmitted, declaring that Debtor’s business is illegal, awarding Complainants and AT&T amounts they claim Debtor owes for its transmission of traffic, and authorizing Complainants’ continuing blocking of Debtor’s traffic. No litigant herein has obtained relief from the automatic stay.

4. 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

¹ Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative, Inc., Gearhart Communications Co., Inc., Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., North Central Telephone Cooperative, Inc., Peoples Rural Telephone Cooperative Corporation, Inc., South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively, the “Complainant”).

the Complainants and AT&T 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).

5. 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").

6. 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. 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.

7. On August 16, 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.

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

8. 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”.

9. 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 AT&T seek to determine amounts the Debtor allegedly owes and more importantly challenges the Debtor’s right to operate its business, including as a debtor-in-possession under the Bankruptcy Code.

10. 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 Complainants, AT&T and the Debtor in which the Complainants and AT&T seek monetary damages; 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.

11. 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

12. 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).

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

14. 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.

15. Written notice of the filing of this Notice of Removal and a copy of this Notice of Removal are being served upon the Complainants and AT&T through their counsel of record and will be filed with the Clerk of the Kentucky PSC.

16. 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.	05/24/11	Petition for Confidential Treatment of the Data Contained in the RLECS' Formal Complaint and Formal Complaint
2.	06/09/11	Public Service Commission Letter
3.	07/05/11	Order to Satisfy or Answer w/Formal Complaint and attachments
4.	07/12/11	Public Service Commission Letter
5.	07/15/11	Kentucky's Answer to Formal Complaint
6.	07/19/11	Motion for Leave to File Third-Party Complaint and Third Party Complaint (AT&T Kentucky's)
7.	07/22/11	Bluegrass Telephone Company's Motion for Limited Intervention
8.	07/26/11	Motion for Issuance of Subpoena Duces Tecum
9.	08/05/11	Order (Halo file answer to 3 rd party complaint within 10 days)
10.	08/05/11	Order (KTC'S Motion for Limited Intervention approved)
11.	08/15/11	AT&T Kentucky's Notification of Halo Bankruptcy
12.	08/16/11	Suggestion of Bankruptcy, Notice of Stay, and Notice of Extensions Under 11 U.S.C. §108
13.	09/02/11	Brief of BellSouth in Response to PSC'S Request
14.	09/02/11	The RLECS' Brief Regarding the Effect of Halo Wireless, Inc.'s Bankruptcy Filing

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

IV. ADOPTION AND RESERVATION OF DEFENSES

18. 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.

19. 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,

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CERTIFICATE OF SERVICE

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