

IN RE:

Case No. 11-42464-Btr-11

Pending in the United States
Bankruptcy Court for the Eastern
District of Texas, Sherman Division

Civil Action No. _____

Adversary No. _____

Removed from Case No.: TC-2011-0404, Pending Before The Missouri Public Service Commission

RURAL TELEPHONE COMPANY,	§
ORCHARD FARM TELEPHONE	§
COMPANY, OREGON FARMERS	§
MUTUAL TELEPHONE COMPANY,	§
OZARK TELEPHONE COMPANY,	§
PEACE VALLEY TELEPHONE	§
COMPANY, INC., ROCK PORT	§
TELEPHONE COMPANY, SENECA	§
TELEPHONE COMPANY,	§
STEELVILLE TELEPHONE	§
EXCHANGE, INC., AND	§
STOUTLAND TELEPHONE	§
COMPANY,	§
Complainants,	§
v.	§
	§
HALO WIRELESS, INC.,	§
Respondent.	§

AMENDED 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 Amended Notice of Removal¹ as follows:

I. Background

1. On June 22, 2011 the Debtor was named as defendant in the lawsuit styled *In Re: BPS Telephone Company, Citizens Telephone Company of Higginsville, Mo., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Communications Services I, Inc., Fidelity Communications Services II, Inc., Fidelity Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation Green Hills Telephone Corporation, Green Hills Telecommunications Services, Holway Telephone Company,*

¹ This amendment is the result of the inadvertent omission of several of the designated exhibits in the original ECF filing. No substantive changes are made to the Notice of Removal originally filed on this date.

Iamo Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, Mark Twain Communications Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Northeast Missouri Rural Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company, (the “Complainants”) against Halo Wireless, Inc., Respondent pending before the Missouri Public Service Commission (the “Missouri PSC”) under Case No.:TC-2011-0404 (the “PSC Proceeding”).

2. In the PSC Proceeding, the Complainants seek declaratory rulings reclassifying the nature of the wireless telecommunication traffic Halo has transmitted, declaring that Halo’s business is illegal, awarding complainants amounts they claim Halo owes for its transmission of traffic, and authorizing Complainants’ continuing blocking of Halo’s traffic.

3. The Debtor asserts that the Missouri PSC does not have jurisdiction and cannot proceed with the PSC Proceeding because each of the claims for relief asserted by the Complainants 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 July 25, 2011, the Debtor filed a Motion to Dismiss the PSC Proceeding based on the Missouri PSC's lack of jurisdiction over the claims in dispute. However, the PSC, without issuing an actual ruling on the Motion to Dismiss, simply indicated that it would proceed in the case.

5. On August 8, 2011, the Debtor 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, commencing the above referenced bankruptcy case which bears Case No. 11-42464 (the "Bankruptcy Case").

6. On August 10, 2011, the Debtor filed a Suggestion of Bankruptcy with the Missouri PSC notifying the Missouri PSC and all parties to the PSC Proceeding that the Debtor had filed for bankruptcy and that the provisions of 11 U.S.C. §362 (the automatic stay) stayed any further action in the proceeding.

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).

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 Complainants therein seek to determine amounts the Debtor allegedly owes the Complainants and more importantly challenges the Debtor’s right to operate its business.

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 Complainants and the Debtor in which the Complainants seek monetary damages and injunctive relief; and b) the PSC Proceeding is not a civil action by the State of Missouri or other governmental unit to enforce such governmental unit's police or regulatory power. The Missouri PSC is merely acting as a judicial tribunal over the private civil action between the Complainants 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 Western District of Missouri, Central 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 Complainants through their counsel of record and will be filed with the Clerk of the Missouri 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.	06/22/11	Complaint
2.	07/25/11	Notice of Appearance
3.	07/25/11	Petition for Leave to Appear and Participate and Statement of Good Standing
4.	07/25/11	Motion to Dismiss
5.	07/26/11	Order Establishing Deadline for Responses
6.	07/27/11	Amended Petition for Leave to Appear and Participate and Statement of Good Standing
7.	07/28/11	Order Granting Leave to Appear Pro Hac Vice
8.	08/10/11	Suggestion of Bankruptcy
9.	08/12/11	Amended Certificate of Service Regarding Suggestion of

Bankruptcy

- | | | |
|-----|----------|---|
| 10. | 08/16/11 | Motion for Stay of August 26 Deadline |
| 11. | 08/16/11 | Order Indefinitely Staying Filing Deadlines |

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 11 U.S.C. §362 and any other provision of the United States 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 Western District of Missouri pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted this 19th day of August, 2011.

Respectfully submitted,

s/ Louis A. Huber, III
LOUIS A. HUBER, III
Missouri 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

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Amended Notice of Removal* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record on this the 19th day of August, 2011:

W.R. England, III
Brian T. McCartney
Brydon, Swearngen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102-0456
(573) 635-7166 telephone
(573) 634-7431 facsimile

s/ Louis A. Huber, III