

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.,	§	CHAPTER 11
	§	
DEBTOR.	§	
	§	

NOTICE OF VIOLATION OF AUTOMATIC STAY

NOW COMES Halo Wireless, Inc. (the “Halo” or “Debtor”), the debtor in the above-captioned proceeding, out of an abundance of caution and in response to the notices described below (the “Blocking Notices”) from Southwestern Bell Telephone Company, Inc. d/b/a AT&T Missouri (“AT&T Missouri”); Craw-Kan Telephone Cooperative, Inc.; Ellington Telephone Company; Goodman Telephone Company; Granby Telephone Company; Iamo Telephone Company; Le-Ru Telephone Company; McDonald County Telephone Company; Miller Telephone Company; Ozark Telephone Company; Peace Valley Telephone Company, Inc.; Rock Port Telephone Company; Seneca Telephone Company; Alma Communications Company d/b/a Alma Telephone Company; Choctaw Telephone Company; and MoKan Dial, Inc. (collectively, the “Non-AT&T Parties” and collectively with AT&T Missouri, the “Blocking Parties”), and hereby notifies this Court of certain actions of the Blocking Parties, which Halo asserts constitute violations of the automatic stay as follows:

1. AT&T Missouri, through an interconnection agreement (“ICA”) with Halo, provides transit for Halo’s calls to downstream carriers (such as incumbent local exchange carriers, competitive local exchange carriers, and other CMRS providers). Under federal law, a “bill and keep” arrangement exists with the downstream carriers, whereby the downstream carriers are not entitled to any compensation unless and until they initiate and complete certain

Exhibit 1

federally-prescribed procedures. Rather than following the federally-prescribed procedures, a host of local exchange carriers (“LECs”) instead demanded that Halo compensate them at “access” rates, presumably out of their switched access tariffs¹ and when Halo refused their demands, instituted multiple, near-simultaneous regulatory proceedings with state commissions around the country, including several actions in Missouri (the “Missouri Proceedings”).

2. Due to these multiplicative proceedings, Halo was forced to seek Chapter 11 protection in the United States Bankruptcy Court for the Eastern District of Texas on August 8. In October 2011, this Court entered three rulings (the “Stay Orders”) to the effect that the automatic bankruptcy stay was not applicable to various regulatory proceedings, but made clear that such exemption was very limited in scope. As this Court is aware, the Stay Orders are on appeal to the Fifth Circuit, and oral argument is scheduled for May 1, 2012.

3. In February of 2012, the Non-AT&T Parties filed a motion to abate the Missouri Proceedings, and AT&T Missouri joined the motion to abate. The Blocking Parties asked the Missouri Public Service Commission (“MoPSC”) to abate the Missouri Proceedings so that they could utilize self-help remedies. The MoPSC entered an order (**Attached as Exhibit A**) abating the Missouri Proceedings, stating that “the [Blocking Parties] may institute proceedings², at their discretion, pursuant to the Commission’s enhanced record exchange rules.”

¹ Halo denies that the Respondents’ state or federal switched access tariffs did or do apply. They cannot apply as a matter of law for any period prior to December 29, 2011. For traffic on and after December 29, 2011 their tariffs could lawfully apply in theory, but only to the extent that Halo’s traffic is deemed to be toll “PSTN-VoIP” traffic under the FCC’s new rules. Halo also asserts that the Respondents’ tariffs also could not be read to apply given the actual terms in those tariffs.

² The procedure for blocking that is being utilized by the Blocking Parties is not actually a “proceeding.” The Blocking Parties simply sent Halo letters in which they state that they will block Halo’s traffic unless Halo prevents them from doing so. Halo may prevent blocking by filing a complaint with the MoPSC or *by paying access charges*.

4. Despite the limited scope of the Court's Stay Orders, the Non-AT&T Parties began instituting self-help collection activities in February and March 2012. More specifically, the Non-AT&T Parties sent requests to AT&T Missouri for blocking of Halo's traffic under Missouri's Enhanced Record Exchange ("ERE") Rules, and AT&T Missouri provided notice of such requests on February 23, March 13, and March 26, 2012, respectively. In such notices, AT&T Missouri stated that it intends to comply with these requests and begin blocking Halo traffic to the Non-AT&T Respondents on April 3, April 12, and April 24, 2012, respectively. Moreover, on March 19, 2012, AT&T Missouri sent Halo its own notice of intent to block Halo traffic under a different provision of the ERE Rules, with blocking to begin on April 25, 2012. In all cases, AT&T notified Halo that blocking would begin automatically unless Halo filed a formal complaint with this Commission. AT&T Missouri's blocking notices to Halo are attached as **Exhibits B through E** and are incorporated by reference.

5. The Blocking Parties' attempts to block Halo's traffic do not fall within the provisions of the Bankruptcy Court's Stay Orders. As such, they violate the automatic stay provisions of the Bankruptcy Code, as well as the Stay Orders themselves. Nevertheless, because the notices indicate that AT&T Missouri will automatically begin blocking Halo traffic as early as April 3, 2012, Halo has filed a complaint (the "Missouri Complaint") with the MoPSC under protest and out of abundance of caution, solely in response to the Blocking Notice and to prevent the blocking threatened therein as the ERE rules purportedly required. In other words, Halo does not voluntarily seek relief from the MoPSC; rather, the Missouri Complaint was filed only as an ostensibly-required response to the Blocking Parties' blocking attempts. As those blocking attempts violate the automatic stay and Bankruptcy Court Stay Orders, the

proposed blocking action and Halo's Missouri Complaint filed in response must be stayed until the Court rules on the violation or lifts the stay.

6. As this Court is aware, Section 362(a)(3) of the Bankruptcy Code prohibits "any act to obtain possession of property of the estate or of property from the estate or *to exercise control over property of the estate.*" 11 U.S.C. § 362(a)(3) (emphasis added).. In this case, Halo's ICA with AT&T Missouri is an executory contract that is property of its estate. *See, e.g., Cinicola v. Scharffenberger*, 248 F.3d 110, 121 (3rd Cir. 2001)("The Bankruptcy Code broadly defines the property of the bankruptcy estate to include 'all legal or equitable interests of the debtor in property as of the commencement of the case.' Executory contracts and leases also fall under this definition.")(internal citations omitted). Blocking Halo's traffic would constitute an exercise of control over Halo's ICA with AT&T Missouri because it would deprive Halo of the benefits of such property. Additionally, in the Blocking Notices, the Blocking Parties explicitly note that they will not block Halo's traffic, thereby exercising control over property of the estate, if Halo agrees to pay them access charges.³

7. Although this Court entered the Stay Orders ruling that the state commission proceedings were partially exempt from the automatic stay, nothing in such orders could in any way be construed as authorizing the imposition of self-help remedies such as blocking of Halo traffic, by which AT&T Missouri would exercise control Halo's executory contract with AT&T. The Stay Orders explicitly provided that the automatic stay "is not applicable to currently pending State Commission Proceedings" and that "any regulatory proceedings in respect of the matters described in [the relevant lift-stay motion], including the State Commission Proceedings, may be advanced to a conclusion and a decision in respect of such regulatory matters may be

³ While the Blocking Notices state that Halo can avoid blocking by paying only post-petition access charges, non-debtor counter parties to an executory contract may not enforce such contract against a debtor until the debtor assumes the executory contract. *See N.L.R.B v. Bildisco*, 465 U.S. 513, 539 (1984).

rendered.” See Exhibits F and G. Self-help through blocking is not part of the State Commission Proceedings as defined in the Stay Orders, and is, indeed, not a proceeding at all. As explained above, the MoPSC agreed to abate the Missouri Proceedings; it did not order AT&T Missouri or any of the Blocking Parties to take self-help remedies. As such, the Respondents’ blocking notices clearly constitute continuing collection activities and attempts to exercise control over property of Halo’s estate that are barred by the automatic stay.

8. The Bankruptcy Code expressly prohibits any act to exercise control over property of the estate (which includes executory contracts), and the Stay Orders provide that the exception to the automatic stay provided by Section 362(b)(4) of the Bankruptcy Code applies to the “State Commission Proceedings” and “any regulatory proceedings.” Because the Blocking Parties attempts to block Halo’s traffic constitutes a violation of the automatic stay and because the Stay Orders did not except from the automatic stay any self-help remedies, constitutes a violation of the automatic stay. Halo is filing this notice in this Court out of an abundance of caution and to affirm that it in no way waives the protection of the automatic stay by filing the Missouri Complaint to prevent self-help unlawful blocking by the Blocking Parties. As noted above, the Missouri Complaint was only filed in response to the blocking notices because the Missouri ERE rules purport to require such a response to a blocking notice.

9. Thus, this notice is being filed solely to notify this Court of the actions of the Blocking Parties and permit the Court to determine the appropriate relief, if any, in response to the actions of the Blocking Parties.

10. Halo reserves its rights to seek sanctions or any other remedy available for the Blocking Parties’ willful violation of the automatic stay and the Stay Orders.

DATED this 3rd day of April 2012.

Respectfully submitted,

/s/ E. P. Keiffer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of April, 2012, the foregoing Notice of Violation of Automatic Stay was served electronically on all ECF participants.

/s/ E. P. Keiffer
E. P. Keiffer