

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI,
CENTRAL DIVISION**

IN RE:

HALO WIRELESS, INC.,

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§ Case No. 11-42464-Btr-11

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§ Pending in the United States

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§ Bankruptcy Court for the Eastern

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§ District of Texas, Sherman Division

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ALMA COMMUNICATIONS
COMPANY D/B/A ALMA
TELEPHONE COMPANY; CHARITON
VALLEY TELEPHONE
CORPORATION; CHARITON
VALLEY TELECOM CORPORATION;
CHOCTAW TELEPHONE COMPANY;
MID-MISSOURI TELEPHONE
COMPANY, A CORPORATE
DIVISION OF OTELCO, INC.; AND
MOKAN DIAL, INC.,

Complainants,

HALO WIRELESS, INC. and
SOUTHWESTERN BELL
TELEPHONE COMPANY, DBA AT&T
MISSOURI

Respondents.

NOTICE OF REMOVAL

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

Exhibit A

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I. Background

1. On August 1, 2011 the Debtor and Southwestern Bell Telephone Company, dba AT&T Missouri (“AT&T”) were named as defendants in the lawsuit styled *In Re: Alma Communications Company d/b/a AlmaTelephone Company; Chariton Valley Telephone Corporation; Chariton Valley Telecom Corporation; Choctaw Telephone Company; Mid-MissouriTelephone Company, a corporate division of Otelco, Inc.; and MoKAN DIAL, Inc.* (the “Complainants”) vs. *Halo Wireless, Inc., and Southwestern Bell Telephone Company, dba AT&T Missouri* pending before the Missouri Public Service Commission (the “Missouri PSC”) under Case No.: TO-2012-0035 (the “PSC Proceeding”).

2. In the PSC Proceeding, the Complainants seek a ruling that the Debtor’s business operations are illegal and further seek an order rejecting various provisions of the interconnection agreement between the Debtor and AT&T that the Complainants claim are illegal because they do not result in the Debtor paying charges the Complainants claim the Debtor owes them.

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 implicates 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 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").

5. On August 12, 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) were applicable to the Debtor and AT&T because the claims asserted by the Complainants against the Debtor and AT&T were inextricably intertwined and related such that any ruling on the claims against AT&T would effectively be a ruling against the Debtor.

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

6. 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”.

7. 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 challenge the Debtor’s right to operate its business and determine payment obligations the Complainants claim the Debtor owes.

8. 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, the Debtor and AT&T in which the Complainants effectively seek monetary and injunctive relief by obtaining a ruling rejecting the provisions of a contract between the Debtor and AT&T the Complainants claim affect them adversely and determining payment obligations the Complainants claim the Debtor owes; 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, Debtor, and AT&T.

9. 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

10. This Notice of Removal is timely pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure (“FRBP”) because the Debtor and AT&T Missouri filed

this Notice of Removal with this Court within ninety (90) days of entry of the order for relief under the Bankruptcy Code and 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).

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

12. 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.

13. 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 Missouri PSC.

14. 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.	08/01/11	Application for Rejection of Portions of an Interconnection Agreement
2.	08/02/11	Notice of Contested Case (Attaching Alma, et al.'s Application for Rejection of Portions of an Interconnection Agreement) (Response due on or before September 6, 2011)
3.	08/12/11	Suggestion of Bankruptcy, Notice of Stay and Notice of Extensions Under 11 U.S.C. §108
4.	08/16/11	Order Indefinitely Staying Filing Deadlines

15. Neither the Debtor nor AT&T Missouri has heretofore sought similar relief regarding the removal of the PSC Proceeding.

IV. ADOPTION AND RESERVATION OF DEFENSES

16. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's or AT&T Missouri'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.

17. 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 Missouri 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
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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 on this the 19th day of August, 2011:

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