

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re:

Stelera Wireless, LLC,

Debtor-in-Possession.

Chapter 11

Case No. 13-13267

**DEBTOR'S SIXTH OMNIBUS MOTION OBJECTING TO CLAIMS AND NOTICE OF
OPPORTUNITY FOR HEARING AND BRIEF IN SUPPORT THEREOF**

NOTICE AND OPPORTUNITY FOR HEARING

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THIS DOCUMENT CAREFULLY AND CONSULT YOUR ATTORNEY ABOUT YOUR RIGHTS AND THE EFFECT OF THIS DOCUMENT. IF YOU DO NOT WANT THE COURT TO GRANT THE REQUESTED RELIEF, OR YOU WISH TO HAVE YOUR VIEWS CONSIDERED, YOU MUST FILE A WRITTEN RESPONSE OR OBJECTION TO THE REQUESTED RELIEF WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, 215 DEAN A. MCGEE AVENUE, OKLAHOMA CITY, OK 73102 NO LATER THAN 14 DAYS FROM THE DATE OF FILING OF THIS REQUEST FOR RELIEF. YOU SHOULD ALSO SERVE A FILE-STAMPED COPY OF YOUR RESPONSE OR OBJECTION TO THE UNDERSIGNED MOVANT'S ATTORNEY AND OTHERS WHO ARE REQUIRED TO BE SERVED. IF NO RESPONSE OR OBJECTION IS TIMELY FILED, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED WITHOUT A HEARING OR FURTHER NOTICE.

THE 14 DAY PERIOD INCLUDES THE THREE (3) DAYS ALLOWED FOR MAILING PROVIDED FOR IN BANKRUPTCY RULE 9006(F).

**NOTICE OF HEARING
(TO BE HELD ONLY IF A RESPONSE IS FILED)**

Notice is hereby given that if a response to the *Debtor's Sixth Omnibus Motion Objecting to Claims And Notice Of Opportunity For Hearing and Brief In Support* is filed in the manner, and within the time limits, stated above, the hearing on the Objection shall be held on November 20, 2014 at 9:30 a.m., in the Second Floor Courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. **If no response is timely filed and the Court grants the requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the Court.**

Pursuant to the Order Allowing the Filing of Omnibus Objections Relating to Ad Valorem Tax Claims dated July 30, 2014 [Dkt #466], Stelera Wireless, LLC (“Stelera” or “Debtor”) debtor and debtor-in-possession in the above-captioned case, pursuant to 11 U.S.C. § 502(b)(3), Fed. R. Bankr. P. 3007 and 9013, and Local Rules 3007-1, 9007-1 and 9013-1.D, hereby objects to the following Claims:

Claim	Creditor	Amount
#11	Mesa County Treasurer Attn: Amy Bosse P.O. Box 20,000 Grand Junction, Colorado 81502	\$15,521.45
#23	Delta County Treasurer 501 Palmer, Suite 202 Delta, Colorado 81416	\$11,999.41
#26	Morgan County Treasurer 231 Ensign Street Fort Morgan, Colorado 80701	\$9,446.33
#114 - amends #35	Bent County Treasurer 725 Bent Avenue P.O. Box 31 Las Animas, Colorado 81054	\$8,696.53
#45	Prowers County Treasurer 301 South Main Street, Ste. 200 Lamar, Colorado 81052	\$13,005.25
#78 – amends #57	Kansas Department of Revenue Civil Tax Enforcement P.O. Box 12005 Topeka, Kansas 66612-2005	\$65,488.76
#70	Lea County Treasurer 100 North Main, Suite 3C Lovington, New Mexico 88260	\$3,420.81
#112	Colorado Department of Revenue 1375 Sherman Street, Rm 504 Denver, Colorado 80261-0004	\$1,912.00

#113	Prowers County Treasurer 301 South Main Street, Ste. 200 Lamar, Colorado 81052	\$5,072.18
#117	Otero County Treasurer Attn: Dennis Smith P.O. Box 501 La Junta, Colorado 81050	\$15,400.84

Basis for Objection:

1. On January 26, 2014, the Debtor filed its *Motion to Abandon Certain Fixtures, Inventory, and Equipment with Brief, and notice of Opportunity for Hearing* [Dkt #260] (the “Abandonment Motion”), alleging the property described therein was (i) outdated and obsolete, (ii) burdened by consensual and non-consensual liens, such as Ad Valorem Tax liens, exceeding any fair market value of said property, and (iii) no value to the Debtor or the bankruptcy estate.

2. Creditor did not object to the Abandonment Motion.

3. On February 21, 2014, this Court entered the *Order Granting Debtor’s Motion to Abandon Certain Fixtures, Inventory, and Equipment with Brief, and Notice of Opportunity for Hearing* [Dkt #316] (the “Abandonment Order”), whereby the Court abandoned certain personal property, including all of Debtor’s personal property located within Creditor’s taxing authority and jurisdiction, because said property had no value to the Debtor or the bankruptcy estate.

4. Notwithstanding Creditor’s *in rem* jurisdiction to levy and collect said Ad Valorem Taxes against personal property, Creditor does not have *in personam* jurisdiction to collect the Ad Valorem Taxes from Debtor.

5. The provisions of 11 U.S.C. § 502(b)(3) and associated jurisprudence clearly provide that in the circumstance of this Claim, especially after entry of the Abandonment Order, the Claim against Debtor must be disallowed outright, not just with respect to the character of its status. Section 502(b)(3) prohibits the Court from determining the amount of the Claim when, as

in this instance, its amount exceeds the value of the Debtor Estate's interest in the related property. To the extent a claim is disallowed under § 502(b)(3), it is not allowed for any purpose, whether it be priority or whether it be for distribution as a non-priority claim. In a lengthy description of the history and purpose behind § 502(b)(3), 3 COLLIER ON BANKRUPTCY, ¶ 502.02[4], at 502-48 (15th ed. 1994) ("Collier"), states:

[i]t is designed to prevent depletion of the debtor's estate by the payment of overdue taxes on property which has come into the hands of the trustee despite the fact that such property had no value to the estate and was more frequently than not abandoned to mortgagees, other lienors, or to taxing authorities. The injustice of such payments at the expense of the general unsecured creditors for the benefit of mortgagees or other lienors is clear since the payment of taxes from the estate of the debtor would clear away tax claims which might otherwise have remained charges on the property.

See Butler v. Shanor, 70 F.3d 1282 (10th Cir.(N.M.) Nov 28, 1995) (NO. 94-2198)(unpublished)(indicating that under 11 U.S.C. §502(b)(3) payment of ad valorem taxes would be barred as the amount of the liens exceeded the value of the property). *See also, In re Skinner Lumber Co.*, 35 B.R. 31, 32 (Bankr. D.S.C. 1983) ("[t]he estate's interest is valueless, because the property was abandoned. Thus, the unsecured tax claim against the estate must be disallowed"); *In re Damar Machine, Inc.*, 30 B.R. 256 (Bkrtcy.D.Me. 1983); *Davis v. Lamesa Independent School District (In re Davis)*, 11 B.R. 621, 623 n. 1 (Bkrtcy.N.D.Tex. 1981).

Conclusion & Request for Relief:

The Abandonment Order clearly states that the abandoned property subject to Creditors' Claims has no value to Debtor or its Estate. Accordingly, Debtor believes the Claims are improper, and should be disallowed entirely. Counsel for Debtor has discussed this Motion with counsel for the Committee. Counsel for the Committee is out of state and has authorized counsel for Debtor to state that counsel for the Committee joins in and adopts this Motion.

Respectfully Submitted,

/s/ J. Clay Christensen

J. Clay Christensen
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--and--

/s/ Jeffrey E. Tate

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ATTORNEYS FOR DEBTOR

CERTIFICATE OF MAILING

This is to certify that on this 29th day of September, 2014, a true and correct copy of the above and foregoing instrument was mailed to:

Mesa County Treasurer
Attn: Amy Bosse
P.O. Box 20,000
Grand Junction, Colorado 81502

Delta County Treasurer
501 Palmer, Suite 202
Delta, Colorado 81416

Morgan County Treasurer
231 Ensign Street
Fort Morgan, Colorado 80701

Bent County Treasurer
725 Bent Avenue
P.O. Box 31
Las Animas, Colorado 81054
Prowers County Treasurer
301 South Main Street, Ste. 200
Lamar, Colorado 81052

Kansas Department of Revenue
Civil Tax Enforcement
P.O. Box 12005
Topeka, Kansas 66612-2005

Lea County Treasurer
100 North Main, Suite 3C
Lovington, New Mexico 88260

Colorado Department of Revenue
1375 Sherman Street, Rm 504
Denver, Colorado 80261-0004

Otero County Treasurer
Attn: Dennis Smith
P.O. Box 501
La Junta, Colorado 81050

Debtor will fulfill the balance of its Notice requirements by and through its Noticing Agent, American Legal Claim Services, LLC.

s/ Jeffrey E. Tate
Jeffrey E. Tate