

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

Halo Wireless, Inc.,	§	
	§	
Complainant,	§	Case No. TC-2012-0331
	§	
v.	§	
	§	
Ellington Telephone Cooperative, Inc., et al.,	§	
	§	
Respondents.	§	

**HALO WIRELESS, INC.’S
OBJECTIONS TO DIRECT TESTIMONY OF DEE M. MCCORMACK**

Halo Wireless, Inc. (“Halo”) hereby objects to and moves to exclude or strike the proposed Direct Testimony of Dee M. McCormack on behalf of Ellington Telephone Company (“Ellington”), as follows:

I. Legal Standards

Procedures in contested cases are governed by section 536.070 of the Revised Statutes of Missouri (RSMo 2000), as supplemented by 4 CSR 240-2.130. Under these provisions, the “[p]rocedural formalities in contested cases generally include...adherence to evidentiary rules, § 536.070.” *Cade v. State*, 990 S.W.2d 32, 37 (Mo.App.1999) (citing *see Hagely v. Board of Educ. of Webster Groves Sch. Dist.*, 841 S.W.2d 663, 668 (Mo. banc 1992)). Therefore, “[s]tatements in violation of evidentiary rules do not qualify as competent and substantial evidence” in administrative proceedings “when proper objection is made and preserved.” *Concord Publ’g House, Inc. v. Dir. of Revenue*, 916 S.W.2d 186, 195 (Mo. banc 1996).

II. Summary and General Objections

In addition, to the extent that that Mr. McCormack's statements are offered as factual testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Ellington has failed to establish a foundation of personal knowledge or reliance on admissible hearsay. Alternatively, to the extent that that Mr. McCormack's statements are offered as expert testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Ellington has failed to establish a foundation showing that the testimony is reliable, including: the basis for Mr. McCormack's opinion and the underlying data supporting the opinion; that the testimony is based on reliable principles and methodology; that the testimony is based on reliable foundational assumption and data; that the testimony is based on reliable reasoning that would allow the methodology to be applied to the foundational data underlying the testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Finally, Halo objects to the testimony to the extent it purports to offer any alleged facts, opinions, or conclusions regarding any of the Counterclaims asserted by AT&T Missouri against Halo in the above captioned matter relating to the alleged breach of the ICA between Halo and AT&T Missouri. Such testimony is neither relevant nor probative because its is being offered on behalf of a party who is a stranger to the ICA and has no actual knowledge or standing to offer testimony regarding AT&T's Missouri's claims.

III. Reservation of Objections

Halo hereby requests any data or other information underlying Mr. McCormack's testimony (to the extent not previously provided). Halo reserves the right to make any additional objections that may be appropriate after review of such information.

IV. Specific Objections to Lines 2:11-16

Halo objects that Mr. McCormack's testimony relies on hearsay for which Ellington has not provided a foundation for admissibility. Halo further objects that the documents referred to are the best evidence of their contents.

V. Specific Objections to Lines 3:14-16

Halo objects that the testimony is based on documents that are the best evidence of their contents.

VI. Specific Objections to Lines 4:6-10

Halo objects that Mr. McCormack's testimony relies on hearsay for which Ellington has not provided a foundation for admissibility. Halo further objects that the documents referred to are the best evidence of their contents.

VII. Specific Objections to Lines 5:22-6:4

Halo objects that Mr. McCormack's testimony relies on hearsay for which Ellington has not provided a foundation for admissibility. Halo further objects that the documents referred to are the best evidence of their contents.

VIII. Specific Objections to Lines 6:5-13

Halo objects that Mr. McCormack's statements as to industry meetings and discussions are inadmissible hearsay and hearsay-within-hearsay. Furthermore, to the extent that Mr. McCormack's statements are offered as substantive evidence as to

whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Ellington has failed to establish a foundation of personal knowledge or reliance on admissible hearsay. In addition, to the extent that Mr. McCormack's testimony is based on documents, such documents are the best evidence of the contents thereof.

IX. Specific Objections to Lines 6:14-18

Halo objects that Mr. McCormack's testimony relies on hearsay for which Ellington has not provided a foundation for admissibility. Halo further objects that the documents referred to are the best evidence of their contents.

X. Specific Objections to Lines 6:19-22

Halo objects that Mr. McCormack's testimony relies on hearsay for which Ellington has not provided a foundation for admissibility. Halo further objects that the documents referred to are the best evidence of their contents.

XI. Specific Objections to Lines 7:1-5

To the extent that that Mr. McCormack's statements are offered as factual testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Ellington has failed to establish a foundation of personal knowledge or reliance on admissible hearsay. To the extent that that Mr. McCormack's statements are offered as expert testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Ellington has failed to establish a foundation showing that the testimony is reliable, including: the basis for Mr. McCormack's opinion and the underlying data supporting the opinion; that the testimony is based on reliable principles and methodology; that the testimony is based on reliable foundational assumption and data; that the testimony is based on reliable reasoning that would allow the methodology

to be applied to the foundational data underlying the testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field.

XII. Specific Objections to Exhibits

Halo objects to Mr. McCormack's exhibits as hearsay, to the extent that they are offered to prove the truth of any matter asserted therein.

XIII. Conclusion

For the reasons discussed above, Halo respectfully requests that the Commission enter an order sustaining Halo's objections and striking or excluding, as applicable, the direct testimony and work product of Dee M. McCormack.

DATED: June 25, 2012

Respectfully submitted,

s/ Daniel R. Young

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2012, the foregoing document has been filed with the Missouri Public Service Commission electronic filing system and that true and correct copies of the foregoing have been served upon all counsel of record by electronic mail.

s/ Daniel R. Young _____
DANIEL R. YOUNG