

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

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

**HALO WIRELESS, INC.’S
OBJECTIONS TO DIRECT TESTIMONY OF W. JAY MITCHELL**

Halo Wireless, Inc. (“Halo”) hereby objects to and moves to exclude or strike the proposed Direct Testimony of W. Jay Mitchell on behalf of Goodman Telephone Company, Ozark Telephone Company, and Seneca Telephone Company (collectively “Goodman”), as follows:¹

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).

¹ It appears that identical copies of Mr. Mitchell’s testimony were filed as documents 63 and 65.

II. Summary and General Objections

To the extent that that Mr. Mitchell's statements are offered as factual testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Goodman has failed to establish a foundation of personal knowledge or reliance on admissible hearsay. Alternatively, to the extent that Mr. Mitchell's statements are offered as expert testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Goodman has failed to establish a foundation showing that the testimony is reliable, including: the basis for Mr. Mitchell'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. Mitchell'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 2:15-20

Halo objects that Mr. Mitchell's testimony relies on hearsay for which Goodman 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 3:18-20

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

VI. Specific Objections to Lines 4:10-14

Halo objects that Mr. Mitchell's testimony relies on hearsay for which Goodman 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 6:1-6

Halo objects that Mr. Mitchell's testimony relies on hearsay for which Goodman 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 6:7-15

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

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

IX. Specific Objections to Lines 6:16-7:2

To the extent that that Mr. Mitchell's statements are offered as factual testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Goodman has failed to establish a foundation of personal knowledge or reliance on admissible hearsay. To the extent that that Mr. Mitchell's statements are offered as expert testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Goodman has failed to establish a foundation showing that the testimony is reliable, including: the basis for Mr. Mitchell'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. In addition, to the extent Mr. Mitchell's testimony attempts to incorporate the traffic study provided as Exhibit 5, Halo's objects that such study is inadmissible as Goodman has failed to lay foundation establishing that it is admissible hearsay. Further Halo, objects that Goodman has failed to show that Exhibit 5 is admissible expert work product, as Goodman has failed to lay a foundation showing: the basis for the opinion and the underlying data supporting the opinion; that the document is based on reliable principles and

methodology; that the document is based on reliable foundational assumption and data; that the document 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.

X. Specific Objections to Lines 7:3-7

Halo objects that Mr. Mitchell's testimony relies on hearsay for which Goodman 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 7:8-11

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

XII. Specific Objections to Lines 7:12:-18

To the extent that that Mr. Mitchell's statements are offered as factual testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Goodman has failed to establish a foundation of personal knowledge or reliance on admissible hearsay. To the extent that that Mr. Mitchell's statements are offered as expert testimony as to whether Halo terminates traffic, the amount, of such traffic, or the nature of such traffic, Goodman has failed to establish a foundation showing that the testimony is reliable, including: the basis for Mr. Mitchell'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.

XIII. Specific Objections to Exhibits

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

Halo objects that Exhibit 5 is inadmissible as Goodman has failed to lay foundation establishing that it is admissible hearsay. Further, even if Exhibit 5 were subject to a hearsay exception, objects that Goodman has failed to show that Exhibit 5 is admissible expert work product, as Goodman has failed to lay a foundation showing: the basis for the opinion and the underlying data supporting the opinion; that the document is based on reliable principles and methodology; that the document is based on reliable foundational assumption and data; that the document 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.

XIV. 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 W. Jay Mitchell.

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