

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

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

**HALO WIRELESS, INC.’S
OBJECTIONS TO REBUTTAL TESTIMONY OF RAYMOND W. DRAUSE**

Halo Wireless, Inc. (“Halo”) hereby objects to and moves to strike or exclude the proposed Rebuttal testimony of Raymond W. Drause filed on behalf of Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T”), 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. Reservation of Objections

Halo hereby requests any data or other information underlying Mr. Drause'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.

III. Specific Objections to Lines 5:1-22

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

IV. Specific Objections to Lines 5:24-7:2

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not

probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

V. Specific Objections to Lines 7:3-22

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3, which purports to summarize Mr. Drause's testimony on this point.

VI. Specific Objections to Lines 8:-15

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

VII. Specific Objections to Lines 8:17-9:5

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

VIII. Specific Objections to Lines 9:7-10:6

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

IX. Specific Objections to Lines 10:8-11:2

Mr. Drause provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, Halo objects that this testimony is not helpful, is not relevant, is not

testimony that Mr. Drause is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. To the extent that this testimony is intended as fact testimony, rather than an expert opinion, Halo objects that AT&T has failed to lay a foundation of personal knowledge and/or reliance on admissible hearsay that would be relied on by a reasonably prudent person. Alternatively, to the extent that such testimony is intended as an expert opinion, Halo objects that the testimony lacks foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field.

Halo further objects because the written documents referred to by Mr. Drause are the best evidence of the purported facts adduced by Mr. Drause, and statements offered to contradict the terms of the written documents violate the parol evidence rule. Furthermore, his statements are not admissible for the reason that his claims are self-serving, speculative in nature and demonstrably untrue. The probative value, if any, is far outweighed by its prejudicial value. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights.

X. Specific Objections to Lines 11:3-12:15

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

XI. Specific Objections to Lines 11:17-14:4

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

XII. Specific Objections to Lines 14:5-13

Halo objects that Mr. Drause's testimony lacks sufficient foundation establishing: the basis for Mr. Drause's opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field. Under the circumstances, the bulk of Mr. Drause's testimony is not relevant, is not

probative, and is prejudicial to Halo's substantive rights. For the same reasons, Halo objects to Exhibit RD-3.

XIII. Specific Objections to Exhibits

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

Halo further objects that Exhibit RD-3 is based on and summarize expert opinion, and AT&T has failed to lay a foundation showing its admissibility, including: the basis for opinion and the underlying data supporting his 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 his testimony; and that the data relied upon is of the type that is reasonably relied upon by experts in the appropriate field.

XIV. Conclusion

As discussed above, Halo respectfully requests that the Commission sustain Halo's objections and strike or exclude, as applicable, the rebuttal testimony and exhibits of Raymond W. Drause.

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