

**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 J. SCOTT MCPHEE**

Halo Wireless, Inc. (“Halo”) hereby objects to and moves to strike or exclude the proposed Rebuttal Testimony of J. Scott McPhee 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

Halo further objects to Mr. McPhee’s testimony for the reason that the majority of his testimony is speculative in nature and demonstrably untrue. The probative value, if any, is far outweighed by its prejudicial value. Moreover, the bulk of Mr. McPhees testimony is neither fact

nor expert testimony, but states conclusions of law. In addition, to the extent that Mr. McPhee purports to provide fact testimony, Halo objects to the entirety of such testimony on the grounds that Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T”) has failed to lay a foundation for Mr. McPhee’s personal knowledge or reliance on admissible hearsay that would be relied on by a reasonably prudent person. To the extent Mr. McPhee provides expert testimony, Halo objects that AT&T has failed to establish its reliability. In particular, objects to Mr. McPhee’s expert testimony as to the rating and billing of traffic (which testimony purports to be based on the premise that telephone numbers are appropriate and reliable determinants for call rating and billing) in its entirety, as such testimony is not based on reliable principles and methods (*i.e.*, it is methodologically unreliable) and is not based on a reliable reasoning process for connecting any such methodology to the traffic at issue. Likewise, because AT&T has failed to establish that Mr. McPhee’s methodology is reliable, Halo also objects to any exhibits created by him or based on his work.

III. Reservation of Objections

Halo hereby requests any data or other information underlying Mr. McPhee’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 Rebuttal Testimony, Lines 1:11-15

Halo objects that the documents implicitly referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

V. Specific Objections to Rebuttal Testimony, Lines 2:1-7

Mr. McPhee’s statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not

qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

VI. Specific Objections to Rebuttal Testimony, Lines 2:8-16

To the extent Mr. McPhee incorporates his direct testimony and the direct testimony of Mr. Neinast, such testimony is objectionable for reasons discussed in Halo's objections thereto.

VII. Specific Objections to Rebuttal Testimony, Lines 3:6:14

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

VIII. Specific Objections to Rebuttal Testimony, Lines 3:15-5:4

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

IX. Specific Objections to Rebuttal Testimony, Lines 5:5-16

Halo objects that the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

X. Specific Objections to Rebuttal Testimony, Lines 6:1-7:5

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XI. Specific Objections to Rebuttal Testimony, Lines 7:6-25

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XII. Specific Objections to Rebuttal Testimony, Lines 8:1-18

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XIII. Specific Objections to Rebuttal Testimony, Lines 8:19-9:12

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XIV. Specific Objections to Rebuttal Testimony, Lines 9:13-10:2

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XV. Specific Objections to Rebuttal Testimony, Lines 10:3-11:2

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not

qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XVI. Specific Objections to Rebuttal Testimony, Lines 11:3-20

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law that are not helpful, relevant, or reliable and that Mr. McPhee is not qualified to provide. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XVII. Specific Objections to Rebuttal Testimony, Lines 12:1-17

Halo objects to Mr. McPhee's testimony for the reason that most if not all of his testimony is self-serving, speculative in nature, and demonstrably untrue. The probative value, if any, is far outweighed by its prejudicial value. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XVIII. Specific Objections to Rebuttal Testimony, Lines 13:1-14:22

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XIX. Specific Objections to Rebuttal Testimony, Lines 15:1-9

Halo objects because the written documents referred to by Mr. McPhee are the best evidence of the purported facts adduced by Mr. McPhee, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

XX. Specific Objections to Rebuttal Testimony, Lines 15:11-16:4

Halo objects that the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. In addition, to the extent Mr. McPhee is testifying as to applicable law, his testimony law, Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law, which are not helpful, relevant, or reliable.

XXI. Specific Objections to Rebuttal Testimony, Lines 16:5-11

The documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XXII. Specific Objections to Rebuttal Testimony, Lines 16:12-18:6

The documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Furthermore, Halo objects that the testimony lacks foundation establishing: the basis for Mr. McPhee'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.

XXIII. Specific Objections to Rebuttal Testimony, Lines 18:7-11

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. McPhee are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them.

XXIV. Specific Objections to Exhibits

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

XXV. Conclusion

For the reasons discussed above, Halo respectfully requests that the Commission enter an order sustaining Halo's objections and striking the rebuttal testimony and exhibits of J. Scott McPhee.

DATED: June 25, 2012

Respectfully submitted,

s/ Daniel R. Young

LOUIS A. HUBER, III

Missouri State Bar No. 28447

DANIEL R. YOUNG

Missouri State Bar No. 34742

SCHLEE, HUBER, McMULLEN & KRAUSE, P.C.

4050 Pennsylvania, Suite 300

P.O. Box 32430

Kansas City, MO 64171-5430

Telephone: (816) 931-3500

Facsimile: (816) 931-3553

STEVEN H. THOMAS

Texas State Bar No. 19868890

TROY P. MAJOUÉ

Texas State Bar No. 24067738

MCGUIRE, CRADDOCK & STROTHER, P.C.

2501 N. Harwood, Suite 1800

Dallas, TX 75201

Telephone: (214) 954-6800

Facsimile: (214) 954-6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

MCCOLLOUGH|HENRY, P.C.

1250 S. Capital of Texas Hwy,

Bldg 2-235
West Lake Hills, TX 78746
Telephone: (512) 888-1112
Facsimile: (512) 692-2522

Attorneys for Halo Wireless, Inc.

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