

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

Halo Wireless, Inc.,

Complainant,

v.

Craw-Kan Telephone Cooperative, Inc.,

Ellington Telephone Company,

Goodman Telephone Company,

Granby Telephone Company,

Iamo Telephone Company,

Le-Ru Telephone Company,

McDonald County Telephone Company,

Miller Telephone Company,

Ozark Telephone Company,

Rock Port Telephone Company,

Seneca Telephone Company,

Alma Communications Company, d/b/a Alma Telephone Company,

Choctaw Telephone Company;

MoKan Dial, Inc.,

Peace Valley Telephone Company, Inc.,

and,

Southwestern Bell Telephone Company, d/b/a AT&T Missouri

Respondents.

File No: TC-2012-0331

**ORDER REGARDING OBJECTIONS TO PRE-FILED TESTIMONY AND
MOTIONS TO STRIKE**

Issue Date: July 9, 2012

Effective date: July 9, 2012

Background

On June 25, 2012, one day before the start of the evidentiary hearing, Halo Wireless, Inc. filed voluminous objections to the prefiled testimony of all of the other parties' witnesses. Halo also filed motions to strike substantial portions of this same

prefiled testimony. More specifically, these objections and motions were filed with regard to the following prefiled testimony:

AT&T Missouri's Witnesses

Rebuttal Testimony of Raymond W. Drause (EFIS Docket Entry No. 141),¹

Direct & Rebuttal Testimony of J. Scott Mcphee (EFIS 159 & 142 respectively),

Direct & Rebuttal Testimony of Mark Neinast (EFIS 162 & 144 respectively),

Craw-Kan, et al.'s Witnesses²

Direct Testimony of Rick Bradley (EFIS 147),

Direct Testimony of Debbie Choate (EFIS 148),

Direct Testimony of Robert Hart (EFIS 152),

Direct Testimony of Kevin L. Johnson (EFIS 154),

Direct Testimony of Jack Jones (EFIS 155),

Direct Testimony of Dee M. McCormack(EFIS 158),

Direct Testimony of W. Jay Mitchell (EFIS 160),

Direct Testimony of Benjamin Jack Rickett (EFIS 163),

Direct Testimony of Craig R. Wilbert (EFIS 164),

Alma, et al.'s Witnesses³

Direct Testimony of Tommie Sue Loges (EFIS 156),

Direct Testimony of Amanda Molina (EFIS 161),

¹ EFIS is the Commission's Electronic Information and Filing System.

² The Craw-Kan Respondents are: Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Goodman Telephone Company, Granby Telephone Company, Iamo Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, and Peace Valley Telephone Company, Inc.

³ The Alma Respondents include: Alma Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial, Inc.

Staff's Witness

Rebuttal Testimony of William L. Voight (EFIS 146).

The objections were directed at specific lines and sections of testimony. Consequently, at the evidentiary hearing, the prefiled testimony of these witnesses was offered for admission, subject to a reserved ruling by the Regulatory Law Judge ("RLJ"). The RLJ set a deadline of July 6, 2012 for written responses to the objections and motions to strike.

The Objections

While the Commission has reviewed and considered all of Halo's objections and motions to strike in detail, the Commission will not repeat every single objection raised by Halo in relation to each and every witness by line and page number in this order. The filings speak for themselves. Rather, for purposes of this order the Commission will outline the general character of the objections and the responses for analysis and decision. There are also variations in the objections from witness to witness, and while the Commission is attempting to summarize the objections, it does not mean to imply that every objection listed in the categories below applied to each and every witness in that category.

With regard to AT&T Missouri's Witnesses:

Halo raises objections that portions of AT&T Missouri's witnesses' testimony: (1) is self-serving, speculative in nature and demonstrably untrue; (2) that the opinions offered lack sufficient foundation and underlying data; (3) that the testimony is not based on reliable principles and methodology, reliable foundational assumption and data, or reliable reasoning; (4) that the data relied upon for these opinions is not of the type that is reasonably relied upon by experts in the appropriate field; (5) that some

statements are legal conclusions, and (6) that documentary evidence offered by these witnesses is subject to the parol evidence rule and cannot be interpreted by these witnesses. Halo further asserts that there is insufficient foundation, in some instances, to establish that AT&T's witnesses are experts for certain opinions they have advanced.

With regard to Craw-Kan, et al.'s Witnesses and Alma, et al.'s Witnesses:

Halo raises objections that portions of these witnesses' statements : (1) lack foundation to the extent they are offered as factual testimony as to whether Halo terminates traffic, the amount of such traffic, or the nature of such traffic; (2) that the opinions offered lack sufficient foundation and underlying data; (3) that the testimony is not based on reliable principles and methodology, reliable foundational assumption and data, or reliable reasoning; (4) that the data relied upon for these opinions is not of the type that is reasonably relied upon by experts in the appropriate field; (5) that any statements related to AT&T Missouri's traffic study should be excluded for failure to lay foundation that the study is admissible hearsay or expert work product and that objections 2 through 4 above also apply; and (6) that any documentary evidence offered by these witnesses is the best evidence of their contents and cannot be interpreted by these witnesses.

Halo further objects to portions of 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 relating to the alleged breach of the Interconnection Agreement ("ICA") between Halo and AT&T Missouri. Halo claims that any such testimony is neither relevant nor probative because it 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.

With regard to Staff's Witness:

Halo raises objections that portions of Mr. Voight's testimony: (1) constitute legal conclusions that he is not qualified to provide; (2) lack foundation establishing its reliability; and (3) are based on inadmissible hearsay. Halo further claims that certain documents referenced by Mr. Voight are the best evidence of their terms, and the parol evidence rule bars the Staff from seeking to controvert them. Finally, Halo asserts that "Transcom" as referenced by Mr. Voight is not the same entity as "Transcom" is today and that no foundation exists for Mr. Voight's testimony in relation to this entity.

The Responses

On July 6, 2012, Commission's Staff, the Alma Respondents, AT&T Missouri, and the Craw-Kan Respondents (collectively "Respondents") filed their responses.⁴ Similar to Halo's objections and motions, the Commission will not repeat every response to every single objection raised by Halo. The Commission, upon an impartial and independent examination of the objections and responses, finds and concludes that the responses are complete, cogent and legally correct. Therefore, the Commission will incorporate the legal analyses of the Respondents into this order, by reference, as if fully set forth therein.

Analysis and Decision

It is well settled law that "the burden is on the party who objects to the admission of evidence to state the proper ground for exclusion," and "[w]here the proper objection is not made the trial court cannot be convicted of error in overruling the objection."⁵ Halo carries the burden of identifying proper grounds for excluding the testimony to

⁴ EFIS Docket Entry Numbers 202, 203, 207, 209, respectively.

⁵ *In re King's Estate*, 572 S.W.2d 200, 204 (Mo. App. 1978).

which it has objected and moved to strike. Having concluded that the Respondents' legal analyses are correct in opposition to Halo's objections and motions to strike, Halo has failed to meet this burden. While the Commission will not address Halo's meritless objections line-by-line, the Commission will make several general observations about Halo's objections.

First, with perhaps the exception of the foundational and hearsay objections, which totally lack support, virtually all of Halos' objections relate to the credibility of the witnesses and the weight and validity of the evidence; not to admissibility. Halo was given a full opportunity to cross-examine all of the Respondents' witnesses and the Commission is fully capable of determining the credibility of those witnesses and the weight and validity to be accorded to the evidence offered by those witnesses – indeed, that is the Commission's role, not Halo's.

Similarly, Halo's many assertions that the objected-to testimony was "self-serving," "speculative," "demonstrably untrue," not the "best evidence" of the facts, or not based upon "reliable principles and methodology" are not decisions that belong to Halo. The Commission is the fact-finder, not Halo.

Additionally, the Commission notes that Halo's objections claiming that certain witnesses were incompetent to testify as to whether Halo is terminating traffic with their respective companies is absurd. While the type and amount of traffic may be in dispute, the fact that Halo has filed this complaint to prevent the blocking of its traffic being terminated with these companies constitutes a judicial admission that it is terminating traffic with these companies.

Halo's objections will be overruled. Halo's motions to strike will be denied.

THE COMMISSION ORDERS THAT:

1. The responses filed by the Commission's Staff, the Alma Respondents, AT&T Missouri, and the Craw-Kan Respondents on July 6, 2012 are incorporated into this order, as if fully set forth therein.
2. Halo Wireless, Inc.'s objections to the pre-filed testimony delineated in this order are overruled.
3. Halo Wireless, Inc.'s motions to strike portions of the pre-filed testimony delineated in this order are denied.
4. All of the prefiled testimony subject to the reserved ruling by the RLJ on Halo's objections and motions are hereby admitted and received into the evidentiary record.
5. This order is effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Harold Stearley, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 9th day of July, 2012.