

DOCKET NO. U-32237 - BELLSOUTH TELECOMMUNICATIONS LLC D/B/A AT&T LOUISIANA VERSUS HALO WIRELESS, INC. IN RE: PETITION OF BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T LOUISIANA SEEKING RELIEF FROM BREACHES OF INTERCONNECTION AGREEMENT WITH HALO WIRELESS, INC.

DATE OF HEARING: June 7, 2012

ADMINISTRATIVE LAW JUDGE CAROLYN DEVITIS

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1 **DOCKET NO. U-32237 - BELLSOUTH TELECOMMUNICATIONS LLC**
2 **D/B/A AT&T LOUISIANA VERSUS HALO WIRELESS, INC. IN RE:**
3 **PETITION OF BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A**
4 **AT&T LOUISIANA SEEKING RELIEF FROM BREACHES OF**
5 **INTERCONNECTION AGREEMENT WITH HALO WIRELESS, INC.**

6 **ADMINISTRATIVE LAW JUDGE CAROLYN DEVITIS:** Welcome to
7 Hearing in Docket U-32237. This is Bellsouth Telecommunications LLC d/b/a
8 AT&T Louisiana versus Halo Wireless incorporated. It is in regard to a Petition
9 of BellSouth Telecommunications, LLC d/b/a AT&T Louisiana Seeking Relief
10 from Breaches of Interconnection Agreement with Halo Wireless. Would you
11 please make your appearances for the record?

12 **MR. MICHAEL KARNO:** Good morning Your Honor, Michael Karno on
13 behalf of AT&T Louisiana. I am here with Dennis Friedman from the Mayer
14 Brown Law Firm, who is also representing AT&T in this matter.

15 **MR. BRANDON FREY:** Good morning Your Honor, Brandon Frey on behalf
16 of the Commission Staff, and I have with me Jeff Valliere.

17 **MR. PAUL GUARISCO:** Good morning, Paul Guarisco with Phelps Dunbar,
18 on behalf of the Small Company Committee of the Louisiana
19 Telecommunications Association.

20 **MS. JANET BOLES:** Janet Boles on behalf of the Small Company Committee.

21 **MR. TROY MAJOUÉ:** Good morning Your Honor, Troy Majoué on behalf of
22 Halo Wireless, Inc., and I have with me Scott McCullough, also for Halo
23 Wireless, Inc.

1 **JUDGE DEVITIS:** Okay, has everyone signed in? Do we have any preliminary
2 matters before we begin today? Want to thank Mr. Guarisco for forwarding us a
3 pre-hearing statement listing the order of witnesses.

4 **MR. KARNO:** Your Honor, this is Michael Karno. There is one outstanding
5 motion; I believe that was filed on behalf of Halo, with respect to a motion to
6 strike AT&T's testimony for Neinast, McPhee, and Drause and we filed
7 yesterday, in the record. It was the original motion, filed by Halo, was on the
8 first, I believe, when we filed our motion in response to that opposition and
9 objection, yesterday.

10 **JUDGE DEVITIS:** Okay, so are you suggesting we take that up first then?

11 **MR. KARNO:** If you would like.

12 **JUDGE DEVITIS:** I think that makes sense. Can't have received the filings.
13 We can allow a brief time for oral argument - not too long, because we need to get
14 on with the Hearing, but I would like to hear first from Halo as regards the
15 objections.

16 **MR. TROY MAJOUÉ:** Your Honor, I won't go too far into the objections, but
17 the short of it is, that is for every line and area of testimony that we have
18 identified in our motions, we identify a number of objections that essentially
19 apply across the board, that these witnesses don't have personal foundation or
20 knowledge to testify to the things about which they are testifying. For example,
21 there are a number of items which they testify about the inner workings of Halo or
22 what Halo does, or doesn't do; what Halo knows, or doesn't know; what kind of
23 numbers and things it receives, or does not receive; and on its face, they simply
24 don't have that knowledge and if they did, or somehow acquired it, they haven't

1 shown how they have gotten it. So for every area where we have identified that,
2 we request that that testimony not be allowed, or at the very least they be required
3 to show what foundation they have. And if they don't, or it is based on some type
4 of belief or other document, that they be required to show that to make the record
5 clear, because they have asserted a number of things that -- as fact, when in fact
6 they have no foundation or knowledge of it. There are a number of other areas
7 that we have identified in our motions, in particular, that go to areas where they
8 make legal conclusions and I understand that in these type of proceedings that is
9 the case that a lot of times the Commission will require the witnesses with
10 industry-experience to make some type of conclusion, or at least relate some type
11 of context to the best of their knowledge and experience. But in this regard, they
12 are all making legal conclusions about the ultimate issues of law in this case. And
13 asserting things that we claim, just aren't true, aren't the law. And so, we have
14 objected to them primarily, to point out to the Commission that these are in fact
15 conclusions of law, even though they have been asserted as facts. And we point
16 that out so that the Commission, is inclined to keep that in there, keep that type of
17 testimony in there, can give the weight it is afforded, which is merely that of a
18 person who is claiming some context, and not as an actual fact. The final thing
19 that really goes to some of the more technical aspects, for example, Mr. Drause,
20 we have identified a number of areas -- we have identified a number of areas
21 where Mr. Drause and Mr. Neinast purport to perform some type of study or
22 analyses, without giving any demonstration of the reliability of those particular
23 analyses, or methodologies. And under the Louisiana rules of evidence, we
24 submit that those things are not probative, because they are not reliable under the

1 standards that Louisiana and the Commission uses. And so other than that, we
2 will leave it to the Commission and the ALJ on the remaining information that we
3 have in our pleadings. Essentially we identify all the lines that we have these
4 specific issues to.

5 **JUDGE DEVITIS:** Mr. Karno.

6 **MR. KARNO:** Yes ma'am. It is a bit disingenuous as the objections -- since it --
7 their testimony is similar to what AT&T's testimony has filed. And AT&T has
8 filed several rounds of testimony in several different dockets in the State of
9 Louisiana, and in front of the Louisiana Public Service Commission, very similar
10 to this type of testimony, or comments. Rule 32 allows it under the LPSC rules
11 and we easily meet the test that it is probative and relevant in this case. We have
12 witnesses that have a long history of employment with AT&T, as well as an
13 outside engineer. If the -- if Halo believes that they are not credible, or that they
14 lack foundation, I can obviously cross-examine these witnesses today, to pull
15 those type of issues out. Five states have already ruled on this same objection,
16 and denied it. So this is typical of a regulatory hearing, the type of testimony that
17 AT&T filed, and we believe you should deny the motion.

18 **MR. MAJOUÉ:** Your Honor, our only response to the claim that we are being
19 disingenuous by objecting to these things. I think we have pointed out that
20 although we recognize and including our witnesses do have to make some
21 contextual type statements that in their instance, for the areas we have identified
22 in our motion, that they make a number of statements that purport to be questions
23 of fact, but are in fact questions of law to which, I mean, that is the Commission's
24 role. And on the other side of that, AT&T has not filed any objections to our

1 testimony, so whether they claim ours has comparable issues is not relevant to our
2 actual motion, but all of that aside, again, we just point this out to the Commission
3 so that at the very least it can give this testimony the weight it is afforded because
4 of the fact that it is not all based on personal knowledge. It hasn't been shown to
5 have all of the elements of reliability that courts and Commissions in Louisiana
6 typically rely on. And so again, for the reasons we set forth in our motion, we ask
7 that these areas of testimony be stricken, or at the very least, given the weight
8 they are afforded, considering their issues.

9 **JUDGE DEVITIS:** Thank you. I am going, at this point in time, to deny Halo's
10 objections. I believe there is some merit to comments about the extent of legal
11 preclusions offered. I do agree with AT&T's assessment of that matter as far as
12 pointing out that it is not un-frequently the case in hearings before regulatory
13 commissions that references are made to the laws, the case law, regulations. I
14 would suggest to the parties though, that they could try a little bit harder to phrase
15 it in terms such as, after their witness has explained they are not a lawyer, that
16 they are giving their understanding, or words to this effect. These types of
17 hearings often are based on an analysis of the laws, the contracts, the cases. And I
18 do have competent lawyers to argue the law, to make -- while AT&T has not filed
19 and objection or motion to strike against Halo's testimony, I found that there was
20 also in that case, extensive references to legal matters. So I think the wiser way to
21 deal with that issue is probably to remain cognizant of what it is, what its place is,
22 and the proper weight to be attributed to it, without trying to hack up the
23 testimony by taking out individual pieces of it. I had a couple of other points I
24 wanted to bring up after reading the filings and one of which was a statement by

1 Halo, requesting that any data or other information underlying the testimony not
2 previously provided, be produced. This seems kind of extraordinary, so maybe I
3 am not understanding what the basis of this request is. I mean, we have finished
4 discovery at this point. And we have had pre-filed testimonies, so nobody should
5 be surprised about anything. Perhaps you could illuminate that a little bit more.

6 **MR. MAJOUÉ:** Well, surely, the nature of that objection is simply that in
7 connection with discovery, or in connection with the regular rules of evidence, we
8 are entitled to whatever data or information their experts have relied upon. And I
9 believe since the filing, or around the time of the filing, we have received some
10 information from them. But still have not received all of the information upon
11 which they base these studies. And for that reason, we don't have and neither
12 does the Commission have, all of the information it needs to determine for sure,
13 whether these analyses are valid, or based on reliable methods.

14 **JUDGE DEVITIS:** Mr. Karno, can you provide us any information on this?

15 **MR. KARNO:** The witnesses for which we provided the responses with the
16 analyses, on the call records and detail and amounts, the witnesses are present
17 today. So to the extent that there are questions about the analysis and the data
18 records that we provided either in testimony, or in discovery, which I believe was
19 sufficient in our response, can be asked about on the record. But we have
20 provided everything that we probably need to provide at this point.

21 **JUDGE DEVITIS:** So, am I understanding correctly, then? This is more in the
22 nature of wanting to be free to request things that come up in the examination?

23 **MR. MAJOUÉ:** Well, it was primarily as a preliminary matter, prior to the
24 examination, to be able to examine whatever pieces of data or standards that they

1 used to make the assumptions that they did and so, all of that data upon which
2 they rely. And so under the general rules of evidence that these experts are
3 relying on this information, or relying on standards, or have source data, we are
4 entitled to see that, and again, I believe Mr. Karno is correct in that we have
5 received some, but not all of this information. And we do recognize that the
6 witnesses are here and can answer some questions and we merely pointed out to
7 the Commission that to the extent that this Commission doesn't have all of that,
8 then we don't have all of the information we need to make these determinations
9 on the reliability of these studies.

10 **MR. DENNIS FREIDMAN:** Your Honor, if I may, Dennis Freidman, for
11 AT&T, Louisiana. To put this in context and maybe take this issue off the table
12 and I hope I am understanding Your Honor's question. The sequence has been
13 that Halo did serve AT&T, Louisiana, with some discovery requests. AT&T
14 appropriately responded. Its responses included the production of some
15 information and included some objections. That is where matters stand. There
16 has been no motion to compel, filed by Halo; and I don't recall the exact timing of
17 the sequence, but if there was not sufficient -- if Halo wanted to file a motion to
18 compel and did not do so because of the press of time, that would be because of
19 the timing of Halo's initial request. So I believe that the way we are situated
20 today, frankly, Your Honor is that we do not have an issue about this. We have
21 had discovery, Halo may, or may not be entirely satisfied with what it has
22 received. We think it should be satisfied, but we don't think that there is a live
23 issue before the court, at this time, before Your Honor at this time, having to do
24 with these discovery matters.

1 **MR. MAJOUÉ:** Your Honor, if I could just point to a Louisiana Rule of
2 Evidence, particular Louisiana Rule or Article 705, in which it says that “Any
3 civil case, the expert may testify in terms of opinion or inference and give his
4 reasons therefore without prior disclosure of the underlying facts or data, unless
5 the court requires otherwise. The expert may, in any event, be required to
6 disclose the underlying facts, or data, on cross examination. So in terms of
7 timing, we are here on cross examination and what we haven’t been previously
8 provided, we request again, so this Commission can have the full understanding
9 and full data. And so again, we point it out not to make an overdrawn issue of it,
10 but to merely point out, “look, we don’t have all the data.” They are asserting a
11 lot of things as standards in the industry, without providing any basis that that is
12 the standard, that have a bunch of data, some of which we admit that we received,
13 but some of which we don’t have and so as we sit here today, about to do cross
14 examination, we just remind the Commission that “Hey, that is missing from the
15 record, under this rule of evidence, we can require it to be in, and it is simply not
16 in.” Yeah, and we want it here.

17 **JUDGE DEVITIS:** Okay, it seems then that it would be inappropriate to grant a
18 blanket-request for information. Discovery is complete; nothing has been filed as
19 far as requesting further information on the discovery. I think a lot of the issues
20 maybe can be resolved through cross examination as we go forward.

21 **MR. MAJOUÉ:** And Your Honor --

22 **JUDGE DEVITIS:** You know, without hearing what it is you are looking for, I
23 am unwilling to say “Blanket,” that it is impossible to get anything, but I am not
24 going to do a blank addition and have it anything else at this point in time.

1 **MR. MAJOUÉ:** Well and our hope is that, you know, potentially on cross
2 examination, that we can point out the information and data, because again, under
3 the new rule of evidence, we can on cross examination, request that. And I guess
4 we can point it out to the Commission and that is really our goal.

5 **JUDGE DEVITIS:** Thank you. I have a long series of objections filed, but the
6 objections read almost virtually the same from objection to objection. So I don't
7 really feel that it is needful to go through and look at all of the individual lines of
8 the statements. The statements, the objections seems to be primarily that the
9 testimony is self-serving, speculative in nature, demonstrably untrue, of limited
10 probative value and without foundation, or personal knowledge. But I don't have
11 any real analysis provided that this particular statement, how this statement is
12 prejudicial or how this statement is self-serving. You know, there is very little
13 basis to rule on the particular lines that the parties are complaining about. I
14 should also probably remark that as a regulatory agency, the Public Service
15 Commission does have somewhat more liberal rules of admissibility than do the
16 courts. Under the Commission's rule of practice and procedure for example, rule
17 32 provides that any evidence which would be admissible under the general
18 statutes of the State of Louisiana, or under the rules of evidence governing
19 proceedings in the matters not involving a trial by jury in the courts in the State of
20 Louisiana, shall be admissible before the Louisiana Public Service Commission.
21 Other evidence may be admitted by the Commission, if it is at all probative and
22 relevant, provided that the substantive rights of the parties are protected. Rules of
23 evidence shall be applied liberally in any proceeding, to the end that all needful
24 and proper evidence shall be conveniently, inexpressibly and speedily heard,

1 while preserving the substantive rights of the parties to the proceeding. So we do
2 have a little bit more flexibility as regards admissibility of the evidence. And I
3 think we need to bear that in mind when making a determination about precluding
4 receipt. And there were so many objections, as to so much of the testimony, that
5 we might have to start over, if we didn't have testimony on both sides that is
6 (INAUDIBLE), anyone might find an objection to raise. I think a lot of the
7 objections really can be treated and dealt with in terms of the validity and weight
8 to be given the evidence through the interchange in the parties and the cross
9 examination of the witnesses. Having just received recently, the motion and
10 response, I don't have for you a full analysis, but I think our viewpoints are
11 consistent with what other Commissions have done, consistent with the rules of
12 evidence, particularly their own rules of evidence of the Louisiana Public Service
13 Commission and I think we can deal with individual issues as we go along. So
14 are the parties wanting to make opening statements?

15 **MR. KARNO:** Yes ma'am. We have an opening statement. I believe we listed
16 it on the pre-hearing statement as well.

17 **JUDGE DEVITIS:** Okay.

18 **MR. KARNO:** Would you like AT&T to start?

19 **JUDGE DEVITIS:** Yes. Do you have some visual aids?

20 **MR. KARNO:** I do.

21 **JUDGE DEVITIS:** Some of the parties, if they don't have a screen available.

22 **MR. KARNO:** It is behind you.

23 **JUDGE DEVITIS:** Okay, that will do it, yes. Please proceed.