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Sent: Tuesday, June 19, 2012 3:36 PM
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Subject: RE: Docket 110234-TP - Halo Wireless, Inc.'s Objections to and Motion to Strike Direct and Rebuttal Test. of McPhee

Attachments: 110234 Halo Motion to Strike McPhee Testimony.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 110234-TP

In re: Bellsouth Telecommunications, LLC d/b/a AT&T Florida v. Halo Wireless, Inc.

c. Document being filed on behalf of Halo Wireless, Inc.

d. There are a total of 24 pages.

e. The document attached for electronic filing is Halo Wireless, Inc.'s Objections to and Motion to Strike Direct and Rebuttal Testimony of J. Scott McPhee.

Thank you for your cooperation.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T Florida.

DOCKET NO. 110234-TP

FILED: JUNE 12, 2012

HALO WIRELESS, INC.'S OBJECTIONS TO AND MOTION TO STRIKE DIRECT AND REBUTTAL TESTIMONY OF J. SCOTT MCPHEE

Halo Wireless, Inc. ("Halo") hereby objects to and moves to strike the proposed Direct Testimony and Rebuttal Testimony of J. Scott McPhee as follows:

I. Legal Standards

Under Florida law, "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded" from proceedings in which the substantial interests of the parties are at issue. § 120.569(g), Fla. Stat. (2011). Other evidence shall be admissible, but only if it is "of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." § 120.569(g), Fla. Stat. (2011). Furthermore, opinion testimony that amounts to a conclusion of law cannot be properly received in evidence. See McKesson Medication Management, LLC v. Slavin, 75 So.3d 308, 312 (3rd DCA 2011); Thundereal Corp. v. Sterling, 368 So. 2d 923, 928 (Fla. 1st DCA 1979) (quoting 31 Am.Jur.2d Expert and Opinion Evidence, § 69 (1967)).

II. Summary and General Objections

Halo objects to Mr. McPhee's testimony for the reason that most of his testimony is self-serving and speculative in nature. The probative value, if any, is far outweighed by its prejudicial value. Moreover, the bulk of Mr. McPhee's 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

BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”) has failed to lay a foundation for Mr. McPhee’s personal knowledge. To the extent Mr. McPhee provides expert testimony, Halo objects that AT&T has failed to establish its reliability. See Ramirez v. State, 651 So.2d 1164, 1167 (Fla.1995) (Noting that courts have not hesitated to reject expert testimony concerning subjects that have not been proven to be sufficiently reliable.). In particular, Halo 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. Specific Objections to Direct Testimony, Lines 3:11-4:2

Mr. McPhee’s statements provide neither fact testimony nor expert testimony, but instead state conclusions of law based on Mr McPhee’s construction of the ICA and associated terms. As such, the testimony is inadmissible. 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 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. 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.

Halo further 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. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative in nature. The probative value, if any, is far outweighed by its prejudicial value.

V. Specific Objections to Direct Testimony, Lines 4:3-11

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law based on Mr. McPhee's construction of an FCC Order. As such, the testimony is inadmissible. Halo further objects because the written document referred to by Mr. McPhee is 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. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

VI. Specific Objections to Direct Testimony, Lines 4:12-20

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law based on Mr. McPhee's construction of the ICA and associated terms. As such, the testimony is inadmissible. 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. Furthermore, his statements are not admissible for the reason that his

claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

VII. Specific Objections to Direct Testimony, Lines 5:1-12

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. As such, the testimony is inadmissible. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

VIII. Specific Objections to Direct Testimony, Lines 5:13-9:12

Halo objects that Mr. McPhee has no personal knowledge of Halo's corporate identity and/or operations. As such, Halo objects for lack of personal knowledge, and 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 Mr. McPhee's testimony is based on written documents, Halo objects that such documents are the best evidence of their contents, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

IV. Specific Objections to Direct Testimony, Lines 9:13-10:5

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. As such, the testimony is inadmissible. 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. 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.

Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

X. Specific Objections to Direct Testimony, Lines 10:6-13

Mr. McPhee's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. As such, the testimony is inadmissible. 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. 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.

Halo further 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. Furthermore, his

statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XI. Specific Objections to Direct Testimony, Lines 10:15-11:2

Halo objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XII. Specific Objections to Direct Testimony, Lines 11:3-8

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.

XIII. Specific Objections to Direct Testimony, Lines 11:9-16

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

XIV. Specific Objections to Direct Testimony, Lines 11:17-18

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.

XV. Specific Objections to Direct Testimony, Lines 11:19-12:9

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further 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.

XVI. Specific Objections to Direct Testimony, Lines 12:10-20

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further 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. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XVII. Specific Objections to Direct Testimony, Lines 12:21-13:10

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further 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. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XVIII. Specific Objections to Direct Testimony, Lines 13:11-14:9

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony

is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further 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.

XIX. Specific Objections to Direct Testimony, Lines 14:10-21

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further objects because his statements are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XX. Specific Objections to Direct Testimony, Lines 15:1-7

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person.

Halo further 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. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XXI. Specific Objections to Direct Testimony, Lines 15:8-16:32

This testimony provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony

is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person.

Halo further 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.

XXII. Specific Objections to Direct Testimony, Lines 17:1-18:4

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

Halo further 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. Furthermore, his

statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XXIII. Specific Objections to Direct Testimony, Lines 18:6-20:19

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further 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. Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XXIV. Specific Objections to Direct Testimony, Lines 20:21-21:5

To the extent that Mr. McPhee's statements are offered as substantive evidence that Halo is terminating interexchange landline traffic that is subject to Access rates, Halo objects that AT&T has failed to lay a foundation for such statements as either fact or reliable expert testimony. 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. 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. In addition, such testimony states conclusion of law that are not helpful, that are not relevant, that Mr. McPhee is not qualified to provide, and is not testimony that would be relied on by a reasonably prudent person.

XXV. Specific Objections to Direct Testimony, Lines 21:6-12

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.

XXVI. Specific Objections to Direct Testimony, Lines 21:13-17

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo objects that this testimony is

not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person.

Halo further 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.

XXVII. Specific Objections to Direct Testimony, Lines 21:19-22-14

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further objects because the written documents referred to by Mr. McPhee are the best evidence of the purported facts adduced by Mr. McPhee.

XXVIII. Specific Objections to Direct Testimony, Lines 22:15-18

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. To the extent that this testimony is intended as additional fact testimony, 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. 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

XXIX. Specific Objections to Direct Testimony, Lines 22:19-23:16

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further 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.

XXX. Specific Objections to Direct Testimony, Lines 23:17-25:15

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further 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.

XXXI. Specific Objections to Direct Testimony, Lines 25:16-26

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo

further 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.

XXXII. Specific Objections to Direct Testimony, Lines 26:1-8

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further 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.

XXXIII. Specific Objections to Direct Testimony, Lines 26:9-20

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further 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.

XXXIV. Specific Objections to Direct Testimony, Lines 26:21-27:8

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to

provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further 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.

XXXV. Specific Objections to Direct Testimony, Lines 27:11-14

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

Furthermore, his statements are not admissible for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XXXVI. Specific Objections to Direct Testimony, Lines 27:15-28:7

Halo objects because AT&T Florida' Complaint speaks for its self and provides the best evidence of the purported facts adduced by Mr. McPhee.

XXXVII. Specific Objections to Direct Testimony, Lines 28:8-16

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. Halo further objects for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XXXVIII. Specific Objections to Direct Testimony, Lines 28:17-29:3

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further objects for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XXXIX. Specific Objections to Rebuttal Testimony, Lines 2:8-17

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.

XL. Specific Objections to Rebuttal Testimony, Lines 13:6-22

Halo objects to Mr. McPhee's testimony for the reason that most if not all of his testimony is self-serving and speculative. 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.

XLI. Specific Objections to Rebuttal Testimony, Lines 16:1-19

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.

XLII. Specific Objections to Rebuttal Testimony, Lines 16:20-17:4

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.

XLIII. Specific Objections to Rebuttal Testimony, Lines 17:7-16

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.

XLIV. Specific Objections to Rebuttal Testimony, Lines 21:1-8

Mr. McPhee provides neither fact testimony nor expert testimony, but instead states conclusions of law. As such, the testimony is inadmissible. Halo also objects that this testimony is not helpful to the trier of fact, is not relevant, is not testimony that Mr. McPhee 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. 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.

Halo further objects for the reason that his claims are self-serving and speculative. The probative value, if any, is far outweighed by its prejudicial value.

XLV. Specific Objections to Rebuttal Testimony, Lines 24:9-25:3

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 inadmissible.

XLVI. Specific Objections to Rebuttal Testimony, Lines 25:4-10

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.

XLVII. Specific Objections to Rebuttal Testimony, Lines 25:11-26:3

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.

XLVIII. Conclusion

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

Dated this 19th day of June, 2012.

Respectfully submitted,

/s/ Gary V. Perko

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion to strike has been served on the following by electronic mail and by directing same to the following business addresses through first-class, United States mail, postage prepaid, on this the 19th day of June, 2012:

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