

Dorothy Menasco

From: Dana Greene [DanaG@hgslaw.com]
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To: Filings@psc.state.fl.us
Cc: thatch@att.com; SM6526@att.com; Larry Harris; jlarson@mcslaw.com; Gary Perko
Subject: Docket 110234-TP - Halo Wireless, Inc.'s Objections to and Motion to Strike Rebuttal Test. of Drause
Attachments: 10234 Halos Motion to Strike Drause Testimony.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Gary V. Perko
Hopping Green & Sams, P.A.
119 South Monroe Street
Suite 300
Tallahassee, FL 32301
(850)425-2359
gperko@hgslaw.com

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 7 pages.

e. The document attached for electronic filing is Halo Wireless, Inc.'s Objections to and Motion to Strike Rebuttal Testimony of Raymond W. Drause.

Thank you for your cooperation.

Dana Greene, Legal Assistant to
Gary V. Perko, D. Kent Safriet,
& Jacob T. Cremer
Hopping Green & Sams, P.A.
119 S. Monroe Street, Ste. 300 (32301)
P.O. Box 6526
Tallahassee, Florida 32314
850-425-3437 (direct)
850-224-8551 (fax)
danag@hgslaw.com

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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 19, 2012

HALO WIRELESS, INC.'S OBJECTIONS TO AND MOTION TO STRIKE REBUTTAL TESTIMONY OF RAYMOND W. DRAUSE

Halo Wireless, Inc. ("Halo") hereby objects to and moves to strike the proposed Rebuttal Testimony of Raymond W. Drause on behalf of BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"), 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).

II. Specific Objections to Lines 6:20-7:16

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.

III. Specific Objections to Lines 7:22-8:10

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 8:11-9:2

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. 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.). 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 9:3-18

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. See Ramirez, supra.

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 and speculative. 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.

VI. Specific Objections to Lines 9:19-11:14

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. See Ramirez, supra. 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 11:14-12:23

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. See Ramirez, supra. 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 13:1-9

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. See Ramirez, supra. 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 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. See Ramirez, supra.

X. 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 Raymond W. Drause.

Dated this 19th day of June, 2012.

Respectfully submitted,

/s/ Gary V. Perko

GARY V. PERKO
Florida Bar No. 855898
HOPPING GREEN & SAMS, P.A.
119 S. Monroe Street, Suite 300
Post Office Box 6526
Tallahassee, FL 32314
Phone: 850-425-2359
Fax: 850-224-8551

STEVEN H. THOMAS
Texas State Bar No. 19868890
TROY P. MAJOUE
Texas State Bar No. 24067738
JENNIFER M. LARSON
Texas State Bar No. 24071167
**McGUIRE, CRADDOCK
& STROTHER, P.C.**
2501 N. Harwood, Suite 1800
Dallas TX 75201
Phone: 214.954.6800
Fax: 214.954.6850

W. SCOTT MCCOLLOUGH
Texas State Bar No. 13434100
MCCOLLOUGH|HENRY PC
1250 S. Capital of Texas Hwy., Bldg. 2-235
West Lake Hills, TX 78746
Phone: 512.888.1112
Fax: 512.692.2522

Attorneys for Halo Wireless, Inc.

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/or by directing same to the following business addresses through first-class, United States mail, postage prepaid, on this the 19th day of June, 2012:

Tracy Hatch
Suzanne Montgomery
150 South Monroe Street, Suite 400,
Tallahassee, Florida, 32301-1546
thatch@att.com
SM6526@att.com
Counsel for BellSouth Telecommunications, LLC d/b/a AT&T Florida

Larry Harris, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
lharris@psc.state.fl.us

s/ Gary V. Perko
Gary V. Perko