

## Eric Fryson

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**From:** WOODS, VICKIE (Legal) [vf1979@att.com]  
**Sent:** Friday, June 22, 2012 4:03 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 110234-TP AT&T's Resp. in Opp. to Halo's Motions to Strike AT&T Florida's Direct & Rebuttal Testimony of McPhee, Direct & Rebuttal Testimony Neinast, and Rebuttal Testimony of Drause

**Attachments:** Document.pdf



Document.pdf  
(8 MB)

- A. Vickie Woods  
BellSouth Telecommunications, LLC d/b/a AT&T Florida  
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vf1979@att.com<mailto:vf1979@att.com>
- B. 110234-TP Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida Against Halo Wireless, Inc.
- C. BellSouth Telecommunications, LLC d/b/a AT&T Florida on behalf of Suzanne L. Montgomery
- D. 29 pages total (includes letter, certificate of service, pleading and Attachments A thru F)
- E. BellSouth Telecommunications, LLC d/b/a AT&T's Response in Opposition to Halo's Motions to Strike AT&T Florida's Direct and Rebuttal Testimony of J. Scott McPhee, the Direct and Rebuttal Testimony of Mark Neinast, and the Rebuttal Testimony of Raymond W. Drause
- .pdf



Suzanne L. Montgomery  
General Attorney-Florida

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June 22, 2012

Ms. Ann Cole  
Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: Docket No. 110234-TP  
Complaint of BellSouth Telecommunications, LLC d/b/a AT&T  
Florida Against Halo Wireless, Inc.**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's Response in Opposition to Halo's Motions to Strike AT&T Florida's Direct and Rebuttal Testimony of J. Scott McPhee, the Direct and Rebuttal Testimony of Mark Neinast, and the Rebuttal Testimony of Raymond W. Drause, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,

  
Suzanne L. Montgomery

cc: Parties of Record  
Gregory R. Follensbee

DOCUMENT RECEIVED

04 | 7 | JUN 22 2012

FPSC-COMMISSION CLERK

**Certificate of Service  
Docket No. 110234-TP**

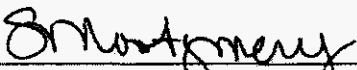
I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 22nd day of June, 2012 to the following:

Larry Harris, Staff Counsel  
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Attys. for Halo Wireless, Inc.

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Attys. for Halo Wireless, Inc.

  
\_\_\_\_\_  
Suzanne L. Montgomery

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth ) Docket No.: 110234-TP  
Telecommunications, LLC d/b/a AT&T )  
Florida Against Halo Wireless, Inc. ) Filed: June 22, 2012

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO  
HALO'S MOTIONS TO STRIKE AT&T FLORIDA'S TESTIMONY**

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida), in accordance with Rule 28-106.204, Florida Administrative Code, respectfully submits this Response in Opposition to Halo Wireless, Inc.'s Objections to and Motions to Strike *all* of the testimony filed by AT&T Florida in this matter, namely, the Direct and Rebuttal Testimony of J. Scott McPhee, the Direct and Rebuttal Testimony of Mark Neinast, and the Rebuttal Testimony of Raymond W. Drause.<sup>1</sup>

AT&T Florida's testimony is similar in kind to that which this Commission routinely and properly admits, and Halo's motions to strike are frivolous. Indeed, as Halo and AT&T incumbent local exchange carriers litigate Halo's conduct across the country, the denial of Halo's motions to strike is now an established ritual: Halo files its baseless motions; the motions are briefed; the motions are denied; and the case goes forward. That has been the result in all six state commissions that have so far considered Halo's stock motion to strike – Wisconsin, Tennessee, South Carolina, Georgia, Illinois and Louisiana<sup>2</sup> – and it should be the result here as well.

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<sup>1</sup> Although the three motions to strike that Halo filed on June 19, 2012, include specific objections to certain passages in the testimony, each motion, both in its first paragraph and in its conclusion, requests that the testimony be stricken in its entirety.

<sup>2</sup> See Attachments A through F hereto. In addition to the attached decisions, the administrative law judge presiding over the Louisiana case orally denied Halo's motions to strike testimony. The transcript of that proceeding is not yet available.

Florida law governing admission of evidence in this proceeding is clear. Fla. Stat.

§ 120.569(g) provides:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida.

On its face, that statute, which this Commission has repeatedly noted is liberal,<sup>3</sup> compels the conclusion that AT&T Florida's testimony is admissible. Halo does not contend, and cannot contend, that the testimony is irrelevant, immaterial or repetitious. That being so, the evidence "*shall be admissible*," so long as it is "of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." *Id.* (emphasis added). That is plainly true of AT&T Florida's testimony; indeed, , even a quick skim of the testimony shows that it is precisely of the type that this Commission routinely relies upon in the conduct of its proceedings.

Second, Halo's Objections are defective on their face. Halo seeks to strike all of AT&T Florida's pre-filed testimony, yet its motions cite no pertinent law<sup>4</sup> and contain no analysis of any of the actual testimony being objected to. All Halo does is identify portions of testimony by page and line number, and then repeat the same boilerplate objections over and over. Halo never attempts to explain how any of its boilerplate objections apply to any particular portion of

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<sup>3</sup> E.g., *Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee*, Docket No. 060635-EU, Order No. PSC-07-0033-PCO-EU (Jan. 9, 2007).

<sup>4</sup> Halo does cite two cases, but they are not pertinent here. Specifically, Halo cites to two appellate court decisions for the proposition that "opinion testimony that amounts to a conclusion of law cannot be properly received in evidence." (See page 1 of the motions directed at the McPhee testimony and the Neinast testimony.) Even if that proposition applies "in a trial in the courts of Florida," it indisputably does not apply in this Commission. See Fla. Stat. § 120.569(g). And, indeed, the decisions to which Halo cites did not involve agency proceedings. Quite the contrary, they were appeals from *jury trials*, where the rules of evidence are applied most strictly, because of the risk of confusing or prejudicing a lay jury. It is precisely because those risks are not present in agency proceedings that Fla. Stat. § 120.569(g) expressly provides that the rules that apply in trial courts do not apply here. (Moreover, neither the McPhee testimony nor the Neinast testimony is "opinion testimony that amounts to a conclusion of law" in any event.)

testimony or how any part of the pre-filed testimony fails to meet the broad admissibility standard of in Fla. Stat. § 120.569(g). Indeed, Halo never discusses the actual content of the testimony at all. Given this utter absence of analysis and explanation, Halo's objections fail at the outset. As the South Carolina Commission observed when it denied Halo's virtually identical objections in AT&T South Carolina's case against Halo there, "[b]oth Halo's objections and its Motions are conclusory, and, for the most part, fail to explain how any of the conclusions stated apply to any particular aspects of the testimonies. . . . Halo has not related any specific principle of law that would dictate exclusion of any of the witnesses' testimony." Att. C at 1. It is not the Commission's task to hunt through testimony and try to decipher what Halo is talking about.

Third, Halo's conclusory objections are without merit. Halo's objections to all the testimony are substantially identical (though the testimony is not), so AT&T Florida will address them together. Halo first contends that the testimony contains inadmissible "conclusions of law," but it identifies no such inadmissible conclusions – because there are none. At appropriate points in their testimony, AT&T Florida's witnesses provide context by informing the Commission of relevant orders, contractual provisions, and similar matters that bear on the evidence they present. They also inform the Commission of AT&T Florida's general positions regarding those matters. In doing so, they take appropriate care to leave it to AT&T Florida's attorneys to present the legal argument supporting those positions in briefs (in contrast to Halo's witnesses, who go on for page after page with the details of Halo's legal argument, all under the guise of "my counsel advises me that . . ."). This common practice of putting regulatory testimony in the context of applicable rules, decisions, and contractual provisions is entirely appropriate and does not render any aspect of the testimony inadmissible. Att. A at 3

“Commission practice supports the presentation of facts in an organized and meaningful way. Often the way to offer meaningful presentation of the facts requires a witness to describe the applicable law, as the witness perceives it, to provide the context necessary to make an informed decision.”).

Halo next contends that the testimony lacks “a foundation of personal knowledge and/or reliance on admissible hearsay,” but again fails to identify any particular statements that lack foundation. Mr. Neinast and Mr. McPhee make clear that their testimony is based both on the broad knowledge of the industry that they have developed as longtime AT&T employees and on specific knowledge they have developed from personally investigating the facts in this case. Mr. Drause relies on specific investigation of Halo and Transcom’s network arrangement as well as decades of engineering experience in the industry. While Halo is free to cross-examine these witnesses, its attempt to prevent them from testifying at all is baseless. *See id.* at 2 (“[T]he [McPhee and Neinast] testimony relies on data either provided by the movants or gathered through standard industry practices. Each witness’s education, experience and company position provide sufficient basis to rely on the offered facts and analysis.”).

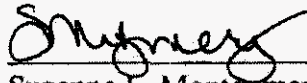
Halo’s claim that the testimony “lacks foundation” for an “expert opinion” is, like the rest of its objections, unexplained and unfounded. Halo appears to disagree with the methods and sources used in the call analyses that Mr. Neinast sponsored, but such claims go at best to the weight of the testimony, not its admissibility, and Halo can make its own contrary case through testimony and cross-examination. *See Att. A* at 2 (rejecting Halo’s motion to strike because “[d]etermination of the validity and proper weight of probative evidence occurs not on a procedural motion, but as part of the Commission’s review of the entire record. An opposing party may contest the validity and weight of evidence through rebuttal and cross-examination.”);

Att. C at 1 (rejecting motion to strike because Halo's "objections go to the weight, rather than the admissibility of the evidence. All parties will have full cross-examination rights of all witnesses presented, thereby allowing the Commission to fully weigh the merits of the evidence."). Likewise, Halo's assertions that the testimony is "self-serving,"<sup>5</sup> "speculative," "demonstrably untrue," or not the "best evidence" of the facts are not merely unsupported, but also would go, at most, only to the weight of the testimony, not its admissibility.

For these reasons, the Commission, like all six other state commissions that have considered Halo's baseless objections, should reject them and deny Halo's motions to strike.

Respectfully submitted this 22nd day of June, 2012.

AT&T FLORIDA



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Authorized House Counsel No. 94116  
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Florida Bar No. 449441  
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<sup>5</sup> Halo's objection that the testimony is "self-serving" is especially ludicrous. Would Halo suggest that its witnesses' pre-filed testimony is not self-serving? The parties' briefs will be self-serving as well.



DATE MAILED

FEB 28 2012

**PUBLIC SERVICE COMMISSION OF WISCONSIN**Investigation into Practices of Halo Wireless, Inc., and Transcom  
Enhanced Services, Inc.

9594-TI-100

Public Service Commission of Wisconsin  
RECEIVED: 02/28/12, 3:11:50 PM**ORDER ON MOTIONS TO STRIKE**

This order, pursuant to Wis. Admin. Code § PSC 2.04(1), denies the following Halo Wireless, Inc., and Transcom Enhanced Services, Inc., objections to direct prehearing testimony:

- Mark Neinast PSC REF#: 159344
- J. Scott McPhee PSC REF#: 159343
- Thomas McCabe PSC REF#: 159342
- Linda Robinson PSC REF#: 159345
- Lois L. Ihle PSC REF#: 159341

Wisconsin Rural Local Exchange Carriers, AT&T Wisconsin, and TDS Telecom

Companies responded (PSC REF#: 159771, 159763 and 159759).<sup>1</sup> Movants replied (PSC REF#: 159877).

To conform the objections to Commission practice, this order deems each objection a Motion to Strike. On a Motion to Strike, movants carry the burden of demonstrating that the subject testimony fails to satisfy the applicable evidentiary standard as applied through Commission practice. This burden movants failed to carry.

Through separate motions, each applicable to one opposing party witness, movants make three practically identical objections. First, movants make a general objection claiming the

<sup>1</sup> The TDS Telecom Companies' response also requests a protective order from the movants' requests for "any data and other information underlying [the witness's testimony]" (PSC REF#: 159759 at 7). TDS correctly identifies the statement as improper and unenforceable to the extent one could consider it a discovery request.

Docket 9594-TI-100

witnesses use data in a manner not acceptable to experts in the field and, therefore, inadmissible as expert testimony.

However, this objection amounts to a misplaced critique of the validity and weight of the testimony. Determination of the validity and proper weight of probative evidence occurs not on a procedural motion, but as part of the Commission's review of the entire record. An opposing party may contest the validity and weight of evidence through rebuttal and cross-examination. This practice applies regardless of how the party attempts to label testimony.

Second, movants object to the admission of the subject testimony for lack of personal knowledge. However, the testimony relies on data either provided by the movants or gathered through standard industry practices. Each witness's education, experience and company position provide sufficient basis to rely on the offered facts and analysis. The Commission typically admits data of this nature. Therefore, sufficient foundation exists.

Moreover, to bar the admissibility of this evidence, movants assert a standard foreign to Wisconsin. Recently, the Tennessee Regulatory Authority (TRA) heard a case involving, for practical purposes, the same issues and parties.<sup>2</sup> Movants submitted objections to the testimony of opposing party witnesses that were practically identical to the instant motions.<sup>3</sup>

Tennessee administrative law recognizes the inadmissibility of hearsay in contested cases, but allows the admission of hearsay for evidence, "of the type commonly relied upon by

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<sup>2</sup> *In Re: Complaint of Concord Telephone Exchange, Inc., Humphreys County Telephone Co., Tellico Telephone Company, Tennessee Telephone Company, Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc., North Central Telephone Coop., Inc., and Highland Telephone Cooperative, Inc., Against Halo Wireless, LLC, Transcom Enhanced Services, Inc., and Other Affiliates for Failure to Pay Terminating Intrastate Access Charges for Traffic and Other Relief and Authority to Cease Termination of Traffic*, Tennessee Regulatory Authority, Docket No. 11-00108.

<sup>3</sup> *Objections to Rebuttal Testimony of Linda Robinson*, TRA, Docket No. 11-00108, January 23, 2012; *Objections to Rebuttal Testimony of Thomas McCabe*, TRA, Docket No. 11-00108, January 23, 2012; *Objections to Direct Testimony of Thomas McCabe*, TRA, Docket No. 11-00108, January 23, 2012; *Objections to Direct Testimony of Linda Robinson*, TRA, Docket No. 11-00108, January 23, 2012.

reasonably prudent men in the conduct of their affairs.”<sup>4</sup> Movants asserted that the opposing party witness failed to meet this standard. The TRA overruled these objections.<sup>5</sup>

Notwithstanding the persuasive precedent of the TRA ruling, the instant motions fail on different grounds. In Wisconsin, the standard for admissibility of evidence in a contested case is far less restrictive than in Tennessee. A Wisconsin administrative agency: (1) may accept evidence outside the standards of “common law or statutory rules of evidence,” (2) “shall admit all testimony having reasonable probative value,” and (3) shall exclude “immaterial, irrelevant or unduly repetitious testimony” [Wis. Stat. § 227.45(1)].

This order denies the motions because movants failed to apply the correct standard and presented no basis for excluding the subject testimony according to it. Furthermore, no such basis exists.

Finally, movants object to the alleged presence of legal conclusions in the subject testimony. The presentation of legal argument is properly reserved to briefs. However, Commission practice supports the presentation of facts in an organized and meaningful way. Often the way to offer a meaningful presentation of the facts requires a witness to describe the applicable law, as the witness perceives it, to provide the context necessary to make an informed decision. Also, the record benefits from testimony that documents a party’s position on a mixed question of law and fact offered by a witness with particular expertise, background or experience with the case.

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<sup>4</sup> In contested cases:

(1) The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

TCA 4-5-313.

<sup>5</sup> *Transcript of Proceedings*, TRA, Docket No. 11-00108, January 23, 2012, at 7-8.

Docket 9594-TI-100

Moreover, granting the Motions on the ground that the subject testimony contains legal conclusions would call into question the validity of movants' prehearing testimony because it is riddled with the same. Instead of negating the efforts made in this proceeding to date, by excluding the bulk of the prehearing testimony, prudence and efficiency dictate the process continue to run on its course.

Monday, February 27, 2012



Michael E. Mewmark  
Administrative Law Judge

MEN::00462086 Order on Motions to Strike.docx

**In The Matter Of:**

*In Re: BellSouth Telecommunications, LLC d/b/a AT&T*

*TN v.*

*Halo Wireless, Inc.*

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*Transcript of Proceedings*

*January 17, 2012*

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*Original File F01-17-12 TRA 11-00119.txt*

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**ATTACHMENT B**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

BELLSOUTH TELECOMMUNICATIONS, LLC )  
d/b/a AT&T TENNESSEE v. ) Docket No.  
HALO WIRELESS, INC. ) 11-00119

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TRANSCRIPT OF PROCEEDINGS

Tuesday, January 17, 2012

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APPEARANCES:

For Halo and Transcom: Mr. W. Scott McCollough  
Mr. Steven H. Thomas  
Ms. Jennifer Larson  
Mr. Paul S. Davidson

For AT&T: Ms. Joelle Phillips  
Mr. J. Tyson Covey

For TRA Staff: Ms. Jean Stone  
Mr. David Foster  
Mr. Jerry Kettles

Reported By:  
Christina A. Meza, LCR, RPR, CCR

1 going to -- I'm not here to testify about that.

2 Q. So you don't know --

3 A. No.

4 Q. -- that, for example, if we assume that  
5 this Bandwidth.com number that was in your list --  
6 that this particular call actually touched  
7 Bandwidth.com's network when it was originated?

8 A. I'm not here to represent that. I'm  
9 here to represent the fact that they're listed in  
10 the LERG, local exchange routing guide, as a  
11 landline carrier, and that's what they're listed as  
12 and that's the way we treat them. That's the  
13 industry practice today.

14 Q. Your study, however, would have assumed  
15 that it did indeed originate on Bandwidth.com's  
16 network?

17 A. If they list themselves as a landline  
18 carrier, Bandwidth.com, then that's how we're going  
19 to treat them, and that's the industry practice  
20 that's being used today by all local exchange  
21 carriers.

22 MR. MCCOLLOUGH: I'm going to rise  
23 just to make a record. I move to exclude his testimony  
24 because his study is unreliable. He used the calling  
25 and called number and then derived from that the

1 inference or assumption that merely because an  
2 originating number was signaled, that it originated on  
3 the carrier's network that holds that number and that  
4 it is the type of call that is denoted in the LERG,  
5 i.e., wireline or wireless.

6 I have demonstrated in this room today  
7 that that is not a valid assumption. That renders his  
8 study invalid, without basis, and inadmissible. I move  
9 to strike.

10 MS. PHILLIPS: Obviously, AT&T opposes  
11 the motion to strike. Mr. McCollough can make his  
12 argument about his view of how reliable our process  
13 was, but it's been explained here, and I think the  
14 Authority can weigh that as the Authority thinks is  
15 appropriate. But it certainly doesn't go to the  
16 admissibility of this evidence. This evidence has been  
17 explained. It is of the type and character that we  
18 routinely rely on in this commission to talk about what  
19 happened with a bunch of telephone calls.

20 CHAIRMAN HILL: One question of the  
21 witness. The study that you did and the way that it  
22 was done, getting the information and all that, and the  
23 results that you had from the study, is that industry  
24 standard -- and I don't mean AT&T only, but industry  
25 standard to do the study the way you did it and to come



1 up with the same kind of information that you came up  
2 with?

3 THE WITNESS: Yes, sir. In discussing  
4 even this matter in other instances, every LEC does  
5 this today. There's a known -- like I said, there's a  
6 known amount of calls that are going to fall outside  
7 the realm of the example Mr. McCollough gave. All the  
8 people I personally know don't use Skype. If you pick  
9 up your cell phone, you make a call. You don't do a  
10 lot of gyrations. If you're going to use a Skype  
11 application, it may be so that you can have a video  
12 call with somebody. Okay? But if you're just going to  
13 make a phone call, you just dial the number as it was  
14 assigned. Most people don't do that that I've had  
15 experience to know, and the industry accepts that.

16 Is there an evolution toward all IP  
17 and will all of this change? I believe so, and I  
18 believe that's why the FCC came up with this new order.  
19 They're going -- you know, it's going to take an  
20 evolution, but it's going to evolve towards that. The  
21 TDM network that AT&T has doesn't do that. A lot of  
22 the LECs that are out there don't do that today. Now,  
23 some of the IP carriers are advancing down new  
24 technology.

25 CHAIRMAN HILL: Well, you've opened up

1 a lot of things I've got questions about, but we're not  
2 here to talk about those things today.

3 I overrule your objection, but well  
4 stated, nonetheless. Anything else?

5 MR. MCCOLLOUGH: Yes, sir.

6 BY MR. MCCOLLOUGH:

7 Q. You said today -- you said in your  
8 rebuttal testimony, page 6, 11 -- lines 11 through  
9 12, that the industry treats IP-originated traffic  
10 as wireline. May I take from that then that your  
11 analysis would have included all IP-originated calls  
12 and characterized them as wireline-originated?

13 A. Yes.

14 Q. Okay. Now, AT&T has an affiliate,  
15 AT&T wireless; correct?

16 A. Yes.

17 Q. And AT&T wireless is building a  
18 next-generation wireless network. It's 4G LTE;  
19 right?

20 A. Yes.

21 Q. That's an IP-based network, isn't it?

22 A. Yes, it is.

23 Q. And, in fact, the voice piece of it runs  
24 on the data side. They actually have a session  
25 initiation protocol-type application baked into the

**SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**HEARING OFFICER DIRECTIVE**

**DOCKET NO. 2011-304-C**

**APRIL 11, 2012**

**Hearing Officer: David Butler**

**DOCKET DESCRIPTION:**

**Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Halo Wireless, Incorporated for Breach of the Parties' Interconnection Agreement**

**MATTER UNDER CONSIDERATION:**

**Halo's Objections to and Motions to Strike the Direct and Rebuttal Testimonies, respectively, of AT&T witnesses Mark Neinast and J. Scott McPhee, and the Rebuttal Testimony of AT&T witness Raymond W. Drause**

**HEARING OFFICER ACTION:**

**Halo's objections are overruled and its Motions to Strike are all denied. Both Halo's objections and its Motions are conclusory, and, for the most part, fail to explain how any of the conclusions stated apply to any particular aspects of the testimonies. When specific portions of the testimony are noted, Halo asserts that the testimonies are defective, based on a number of general grounds, and that the testimonies should therefore be automatically excluded before they are even presented to the Commission. Such objections go to the weight, rather than the admissibility of the evidence. All parties will have full cross-examination rights of all witnesses presented, thereby allowing the Commission to fully weigh the merits of the evidence. However, Halo has not related any specific principle of law that would dictate exclusion of any of the witnesses' testimony. Again, all objections are hereby overruled, and all Motions to Strike are denied.**

**ATTACHMENT C**

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

Complaint of TDS TELECOM on )  
behalf of its subsidiaries )  
BLUE RIDGE TELEPHONE COMPANY; ) Docket No. 34219  
CAMDEN TELEPHONE & TELEGRAPH, )  
INC.; NELSON BALL GROUND )  
TELEPHONE COMPANY; and QUINCY )  
TELEPHONE COMPANY against )  
HALO WIRELESS, INC.; TRANSCOM )  
ENHANCED SERVICES, INC. and )  
OTHER AFFILIATES for failure to )  
pay terminating intrastate )  
access charges for traffic and )  
for expedited declaratory )  
relief and authority to cease )  
termination of traffic )

Hearing Room  
244 Washington Street  
Atlanta, Georgia

Wednesday, April 25, 2012

The above-entitled matter came on for hearing  
pursuant to notice at 10:01 a.m.

BEFORE:

TIM G. ECHOLS, Chairman  
CHUCK EATON, Vice Chairman  
H. DOUG EVERETT, Commissioner

Brandenburg & Rasty  
435 Cheek Road  
Monroe, Georgia 30655

**ATTACHMENT D**

1 CHAIRMAN ECHOLS: Thank you.

2 All right, let's get a couple of housekeeping  
3 matters behind us.

4 The parties have consented to making an opening  
5 statement. I'm going to allow each party -- you think five  
6 minutes would be enough for an opening statement?

7 (No response.)

8 CHAIRMAN ECHOLS: You all okay with that?

9 (No response.)

10 CHAIRMAN ECHOLS: If there's no objection, we're  
11 going to proceed how we've traditionally done it here in  
12 telecom cases, we're going to have each witness present  
13 their direct and their rebuttal testimony simultaneously, if  
14 there's no objection.

15 MS. DAVIS: No.

16 CHAIRMAN ECHOLS: So please have your witnesses  
17 prepared to present their direct and rebuttal testimony when  
18 they take the stand and be prepared to cross each witness on  
19 their direct and rebuttal testimony. Great.

20 Are there any public witnesses today?

21 (No response.)

22 CHAIRMAN ECHOLS: Okay. There are also a number  
23 of motions to strike testimony that were filed by Halo and  
24 Transcom and we're going to address those motions at this  
25 time.

1 Mr. Mew.

2 MR. MEW: Mr. Chairman, with the panel's  
3 indulgence, Troy Majoue will address those.

4 CHAIRMAN ECHOLS: Mr. Majoue.

5 MR. MAJOUÉ: We'll be brief on the motions, and as  
6 you can see, the motions themselves are fairly brief.

7 As a preliminary matter, we just note that in  
8 every one of the pieces of testimony that's been offered,  
9 there are multiple areas that constitute legal conclusions  
10 which these witnesses are not entitled to make. And that in  
11 addition to that, they purport to make factual assertions  
12 about the way Halo and Transcom work, including internal  
13 workings and things of that nature, which they have no  
14 personal knowledge. It's something that in other  
15 proceedings where they've offered comparable testimony,  
16 they've acknowledged they don't actually have personal  
17 knowledge, it's based on third hand sources; in other words,  
18 hearsay type evidence.

19 And so as a preliminary matter, we ask that to the  
20 extent any of these items constitute testimony for which  
21 they have no personal knowledge or which constitutes legal  
22 conclusions which they're not qualified to make, that that  
23 be stricken or at the very least that the Commission give it  
24 the weight it's accorded, which is they're not legal experts  
25 and they're not entitled to give testimony that approaches

1 those issues.

2           And similarly, to the extent that there are some  
3 expert witnesses, we assert that those expert witnesses have  
4 not followed all of the standards for maintaining any  
5 appearance of reliability in their expert opinion. In  
6 particular, they have not asserted any methodology which is  
7 reliable or even really explained why their assumptions are  
8 valid or what methodology provides any basis for their  
9 opinion. And based on that, the expert testimony, we  
10 submit, should also be stricken on those grounds.

11           Thank you.

12           CHAIRMAN ECHOLS: Thank you.

13           AT&T.

14           MS. DAVIS: Mr. Covey will argue our motion.

15           CHAIRMAN ECHOLS: Mr. Covey.

16           MR. COVEY: Good morning.

17           Halo made similar motions to strike and similar  
18 arguments in prior proceedings, and Tennessee, Wisconsin,  
19 South Carolina, all three of those commissions denied those  
20 motions with good reason for doing so.

21           The argument on legal conclusions, first of all,  
22 is very disingenuous if you read Halo's testimony which is,  
23 in effect, a legal brief. But in any event, the AT&T  
24 testimony talks about legal principles every once in awhile,  
25 as is common in Commission proceedings to give a context for

1 what they're talking about, so people will have some idea  
2 what the issues are and what will ultimately have to be  
3 decided.

4 As far as the foundation objections, the AT&T  
5 witnesses present testimony based on their personal  
6 familiarity with the facts as they explain in their  
7 testimony, based on their experience in the industry which  
8 they also explain in their testimony. This too is very  
9 common type of testimony in regulatory proceedings and  
10 there's no basis to strike it.

11 That's all I have.

12 CHAIRMAN ECHOLS: Mr. Walsh, I'd like to hear from  
13 you -- oh, I'm sorry, Mr. Galloway -- sorry about that.

14 MR. GALLOWAY: Mr. Chairman, on behalf of TDS, let  
15 me say this is the first time I've ever defended a motion to  
16 strike testimony in its entirety, and while that might be a  
17 real good way to shorten the hearing, the motion needs to be  
18 denied. I suspect the purpose of the motion is really to  
19 set up an issue potentially on appeal.

20 Halo and Transcom object to the entirety of Mr.  
21 Drause's testimony -- I'm going to use him as an example, it  
22 applies every place for the other witnesses -- stating that  
23 instead of giving fact testimony, he's giving conclusions of  
24 law. Mr. Drause, as do the other witnesses, testifies about  
25 the technology configuration that Halo uses. He testifies



1 that Halo developed essentially a technological gizmo to be  
2 able to call these calls wireless. And you can look through  
3 his testimony and look through his descriptions of the  
4 technology involved, and you can see that that is in fact  
5 going to the technology, not to a legal argument.

6 The allegation is that Mr Drause fails to lay a  
7 foundation on his personal testimony -- personal knowledge.

8 All the witnesses in this case are people who have had  
9 multiple years of experience in telecom, these are highly  
10 technical issues and these people all have experience on  
11 those issues. And you may determine that each witness is  
12 credible or one witness is credible and another is not, but  
13 that goes to how you weigh the testimony, not its  
14 admissibility.

15 And I would note and reiterate what Mr. Covey  
16 said, throughout, for example, Mr. Wiseman's testimony, it  
17 is replete with legal argument about what -- and statements  
18 about what this case means or that case means or what they  
19 were advised by counsel. So I agree with him that it is  
20 disingenuous to criticize this testimony on behalf of TDS  
21 when theirs has the same infirmity.

22 Y'all have always had cases up here where people  
23 sit on the stand and say "I'm not a lawyer, but my  
24 interpretation is," you've always allowed that and then you  
25 have assessed its credibility in your capacity as the fact-

1 finder and the adjudicator of the case.

2 So we would ask that the motion to strike be  
3 denied. Thank you.

4 CHAIRMAN ECHOLS: Mr. Walsh.

5 MR. WALSH: Mr. Chairman, the staff would  
6 recommend that the Commission deny the motions to strike. I  
7 think the reasons for denying have been set out pretty much  
8 by TDS and AT&T counsel. The motions to strike say, on  
9 pretty much all of them I think except for one, it mentions  
10 specifically that Halo and Transcom object to the expert  
11 testimony as to the rating and billing of traffic, which  
12 testimony purports to be based on the premise that telephone  
13 numbers are appropriate and reliable determinants for call  
14 rating and billing and it says that such testimony is not  
15 based on reliable principles and methods.

16 Transcom and Halo will have a full opportunity to  
17 cross examine the witnesses on how reliable a method that is  
18 and the Commission can take that under its advisement as  
19 well as the credibility of the rest of the testimony. We do  
20 believe that the experience of the witnesses in this  
21 proceeding allow them to testify as experts on the subject  
22 matter in their testimony.

23 CHAIRMAN ECHOLS: Okay. Commissioners, if there's  
24 no objection, I'm going to deny the motions.

25 (No response.)



ILLINOIS COMMERCE COMMISSION

June 1, 2012

Illinois Bell Telephone Company	:	
-vs	:	
Halo Wireless, Inc.	:	
	:	12-0182
Complaint as to Violations of an	:	
Interconnection Agreement entered	:	<b>SERVED ELECTRONICALLY</b>
into under 47 U.S.C. §§ 251 and 252	:	
and pursuant to Section 10-0108 of	:	
the Public Utilities Act.	:	

NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given that the Administrative Law Judge has overruled Halo Wireless, Inc.'s "Objections to Direct Testimony of J. Scott McPhee" and "Objections to Direct testimony of Mark Neinast" filed on May 15, 2012.

Sincerely,

Elizabeth A. Rolando  
Chief Clerk

EAR:ikb  
Administrative Law Judge Von Qualen

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ILLINOIS COMMERCE COMMISSION

June 12, 2012

Illinois Bell Telephone Company	:	
-vs	:	
Halo Wireless, Inc.	:	
	:	12-0182
Complaint as to Violations of an	:	
Interconnection Agreement entered	:	<b>SERVED ELECTRONICALLY</b>
into under 47 U.S.C. §§ 251 and 252	:	
and pursuant to Section 10-0108 of	:	
the Public Utilities Act.	:	

NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given that the Administrative Law Judge has overruled Halo Wireless, Inc.'s Objections to the Rebuttal Testimonies of J. Scott McPhee and Mark Neinast and the Direct Testimony of Dr. James Zolnierrek filed on June 1, 2012.

Sincerely,

Elizabeth A. Rolando  
Chief Clerk

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Administrative Law Judge Von Qualen

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