

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS BELL TELEPHONE COMPANY	§	
	§	
Complainant	§	DOCKET NO. 12-0182
	§	
v.	§	
	§	
HALOWIRELESS, INC.,	§	
	§	
Respondent	§	

**HALO WIRELESS, INC.’S
OBJECTIONS TO REBUTTAL TESTIMONY OF MARK
NEINAST**

Halo Wireless, Inc. (“Halo”) hereby objects to and moves to strike the proposed rebuttal testimony of Mark Neinast on behalf of Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T”), as follows:

I. Legal Standards

Under Illinois law, the rules of evidence and privilege generally must be followed in Commission proceedings. 5 ILCS 100/10-40; 83 Ill. Admin Code § 200.610; *see also, e.g.* Ill. R. Evid. 401-402 (regarding relevance), 403 (regarding prejudicial and cumulative evidence), 701-705 (regarding expert and lay opinions), 801-805 (regarding hearsay), 1001-1008 (regarding the best evidence rule). The sole exception to this principle is that evidence not admissible under the rules of evidence may be admitted if, and only if, it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. 5 ILCS 100/10-40; 83 Ill. Admin Code § 200.610.

II. Reservation of Objections

Halo hereby requests any data or other information underlying Mr. Neinast’s testimony (to the extent not previously provided). Halo reserves the right to make any additional objections that may be appropriate after review of such information.

III. Specific Objections to Lines 12-35

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Furthermore, his statements are inadmissible hearsay. The probative value, if any, is far outweighed by its prejudicial value.

IV. Specific Objections to Lines 68-79

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. The probative value, if any, is far outweighed by its prejudicial value.

V. Specific Objections to Lines 80-107

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. Halo objects that the testimony lacks foundation establishing: the basis for Mr. Neinast'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, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Moreover, to the extent Mr. Neinast incorporates his direct testimony; such testimony is objectionable for reasons discussed in Halo's objections to such testimony.

VI. Specific Objections to Lines 111-125

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

VII. Specific Objections to Lines 126-138

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule. Moreover, to the extent Mr. Neinast incorporates the testimony of J. Scott McPhee; such testimony is objectionable for reasons discussed in Halo's objections to such testimony. Alternatively, to the extent Mr. Neinast is his own offering expert testimony as to the nature of Halo's traffic, Halo objects that the testimony lacks foundation establishing: the basis for Mr. Neinast'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.

VIII. Specific Objections to Lines 139-149

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

IX. Specific Objections to Lines 158-191

To the extent Mr. Neinast incorporates his direct testimony; such testimony is objectionable for reasons discussed in Halo's objections to such testimony. Alternatively, to the extent Mr.

Neinast is his own offering expert testimony as to the nature of Halo's traffic, Halo objects that the testimony lacks foundation establishing: the basis for Mr. Neinast'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.

X. Specific Objections to Lines 232-244

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

XI. Specific Objections to Lines 245-254

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule. In addition, to the extent Mr. Neinast incorporates his direct testimony and call studies, such evidence is objectionable for reasons discussed in Halo's objections to such evidence.

XII. Specific Objections to Lines 256-276

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Furthermore, his statements are inadmissible hearsay. The probative value, if any, is far outweighed by its prejudicial value. Moreover, to the extent Mr. Neinast incorporates the

testimony of J. Scott McPhee; such testimony is objectionable for reasons discussed in Halo's objections to such testimony.

XIII. Specific Objections to Lines 277-282

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Furthermore, his statements are inadmissible hearsay. The probative value, if any, is far outweighed by its prejudicial value. Moreover, to the extent Mr. Neinast incorporates the direct testimony of J. Scott McPhee; such testimony is objectionable for reasons discussed in Halo's objections to such testimony.

XIV. Specific Objections to Lines 287-290

Mr. Neinast's testimony is objectionable for the same reasons discussed in Halo's objections to the direct testimony he references.

XV. Specific Objections to Lines 322-326

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

XVI. Specific Objections to Lines 329-345

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Furthermore, his statements are inadmissible hearsay. The probative value, if any, is far outweighed by its prejudicial value.

XVII. Specific Objections to Lines 389-393

Moreover, to the extent Mr. Neinast incorporates his direct testimony; such testimony is objectionable for reasons discussed in Halo's objections to such testimony.

XVIII. Specific Objections to Lines 449-456

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

XIX. Specific Objections to Lines 493-506

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

XX. Specific Objections to Lines 524-538

Halo objects because the written documents referred to by Mr. Neinast are the best evidence of the purported facts adduced by Mr. Neinast, and statements offered to contradict the terms of the written documents violate the parol evidence rule.

XXI. Specific Objections to Lines 539-549

Mr. Neinast's statements provide neither fact testimony nor expert testimony, but instead state conclusions of law. In addition, the documents referenced by Mr. Neinast are the best evidence of their terms, and the parol evidence rule bars AT&T from seeking to controvert them. Furthermore, his statements are inadmissible hearsay. The probative value, if any, is far outweighed by its prejudicial value.

XXII. Conclusion

For the reasons discussed above, Halo respectfully requests that the Commission enter an order sustaining Halo's objections and striking the rebuttal testimony of Mark Neinast.

Respectfully submitted,

/s/ Jennifer M. Larson (6/1/12)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objections has been served on the following via e-mail on this the 1st day of June, 2012:

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