

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
Petition of Windstream Services, LLC	)	WC Docket Nos. 10-90
Cooperative for Limited Waiver of	)	CC Docket No. 01-92
Relevant Portions of 47 C.F.R. §51.915(c) & (d)	)	
Of the Commission's Rules	)	
	)	

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

Pursuant to the Wireline Competition Bureau's Public Notice,<sup>1</sup> the United States Telecom Association (USTelecom)<sup>2</sup> respectfully submits these comments in support of the Petition for Limited Waiver (Petition) filed September 1, 2015, by Windstream Services, LLC (Windstream) on behalf of certain of its incumbent local exchange carrier (ILEC) subsidiaries. Windstream seeks limited waiver of the requirements set forth in Section 51.915(c) and (d) of the Commission's rules, "insofar as such requirements prevent Windstream from including in their Intrastate Access Reduction calculations uncollectible intrastate access charges billed to Halo Wireless Inc. (Halo) in Fiscal Year 2011."<sup>3</sup> Windstream seeks this inclusion to be effective as of the end of FY2011 as it affects the company's CAF ICC Support for the period 2012-2015.<sup>4</sup>

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<sup>1</sup> See Public Notice, "Wireline Competition Bureau Seeks Comment on Windstream Petition for Limited Waiver of the Commission's Intercarrier Compensation Revenue Recovery Rules for Price Cap Carriers (DA 15-1057), (rel. Sep. 21, 2015) (WC Docket Nos. 10-90 and CC Docket No. 01-92).

<sup>2</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

<sup>3</sup> See Petition of Windstream for Limited Waiver of Relevant Portions of 47 C.F.R. §51.915(c) and (d) of the Commission's Rules, WC Docket No. 10-90, CC Docket No. 01-92 at 1-2 (filed Sep. 1, 2015) (Windstream Petition).

<sup>4</sup> *Id.* at 10.

USTelecom believes that Windstream, much like similarly situated carriers that previously were granted such relief, should be able to include the 2011 intercarrier compensation payments Halo owes in its eligible recovery baseline revenues.<sup>5</sup> It is abundantly clear that, due to Halo's Chapter 11 bankruptcy filing<sup>6</sup> and subsequent decision to liquidate,<sup>7</sup> the overwhelming majority of intercarrier compensation owed by Halo will go forever unpaid. For years, carriers and state regulators urged the Commission to put an end to Halo's deliberate, calculated campaign to evade responsibility for payment of applicable access charges. Halo's bankruptcy is only a single moment in a long-twisting saga that made it impossible to collect any payments by early 2012, which has made it impossible to collect virtually any payments at all. In its *Rural LECs Waiver Order*, the Commission reasoned that "it would be contrary to, and would impede effective implementation of these policies if Halo's non-payment due to bankruptcy for services that were provided locked providers harmed by Halo's non-compliance into a lower Base Period Revenue (BPR) for the duration of the ICC rate transition."<sup>8</sup> Although as stated in its Petition, Windstream is different from other carriers granted similar relief because Windstream and its

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<sup>5</sup> See *In the Matter of Connect America Fund, Developing as a Unified Intercarrier Compensation Regime, Petitions for Waiver of Section 51.917(b)(7) of the Commission's Rules*, WC Docket No. 10-90, CC Docket No. 01-92, Order, 29 FCC Rcd 9958 (2014) (*TDS Waiver Order*); *In the Matter of Connect America Fund, Developing as a Unified Intercarrier Compensation Regime, Petitions for Waiver of Section 51.917(b)(7) of the Commission's Rules*, WC Docket No. 10-90; CC Docket No. 01-92, Order, 30 FCC Rcd 6430 (Jun. 24, 2015) (*Rural LECs Waiver Order*).

<sup>6</sup> Courts and regulatory agencies of competent jurisdictions are barred from ordering payment due to Halo's bankruptcy court filing. See, e.g., *Complaint and Petition for Relief of Bellsouth Communications, LLC d/b/a AT&T Southeast v. Halo Wireless, Incorporated for Breach of the Parties' Interconnection Agreement*, Order Granting Relief Against Halo Wireless, Docket No. 2011-304-C, Order No. 2012-516, Public Service Commission of South Carolina (issued July 17, 2012) ("[Court did] not quantify any precise amount due, hold[ing] that is an issue for Halo's bankruptcy proceeding.").

<sup>7</sup> *In Re: Halo Wireless, Inc.*, Emergency Motion for Section 105 Status Conference in Order to Establish Procedures for Conversion to Chapter 7, Case No. 11-42464, U.S. Bankruptcy Court for the Eastern District of Texas - Sherman Division, (filed July 13, 2012).

<sup>8</sup> See *Rural LECs Waiver Order* at 6437, ¶ 16, citing, *In the Matter of Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Petitions for Waiver of Section 51.917(b)(7) of the Commission's Rules*, WC Docket No. 10-90, CC Docket No. 01-92, Order, 29 FCC Rcd 9958, 9963-64, ¶ 17 (*Halo Order*) (citing, *In the Matter of Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17962, ¶ 858 (*USF ICC Transformation Order*)).

subsidiary ILECs are price cap carriers, fundamental fairness and the public interest dictate that the Commission waive the appropriate rule sections for all carriers harmed by Halo's access avoidance schemes.<sup>9</sup>

### **I. The Halo Wireless Situation is Unique**

The size and scope of Halo Wireless' impact on the ILEC industry, Halo's Chapter 7 bankruptcy liquidation,<sup>10</sup> and the early and consistent warnings by carriers that Halo Wireless was engaged in an improper access arbitrage clearly differentiate the payments Halo owes to carriers from uncollectible revenues expected in the ordinary course of business. Halo Wireless perpetrated an enormous and continuing arbitrage scheme and then decided to pursue bankruptcy protection, making it impossible for carriers to order or enforce payment.

For years, Halo Wireless forwarded wireline interexchange traffic for termination on ILEC networks that Halo attempted to mischaracterize as wireless. The Commission directly addressed the scheme perpetrated by Halo Wireless in its USF/ICC Transformation Order, stating that "[t]he 're-origination' of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position."<sup>11</sup>

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<sup>9</sup> See Comments of USTelecom on GVTC Petition and Texas LECs Petition, WC Docket No. 10-90 et al. (filed Jul. 28, 2014) wherein USTelecom advocated that the Commission should also waive section 51.915(c) so that similarly situated price cap carriers may include in their 2011 Price Cap Carrier Base Period Revenue unpaid amounts billed to Halo Wireless.

<sup>10</sup> *Halo Wireless, Inc.*, Emergency Motion for Section 105 Status Conference in Order to Establish Procedures for Conversion to Chapter 7, Case No. 11-42464, U. S. Bankruptcy Court for the Eastern district of Texas – Sherman Division (filed July 13, 2012).

<sup>11</sup> See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, 26 FCC Rcd. 17663 (2011), (*USF/ICC Transformation Order*), ¶ 1006.

Windstream states that in late 2010 it began receiving a substantial amount of inbound traffic from Halo Wireless, and shortly thereafter some of Windstream's ILECs unsuccessfully began the process of negotiating an interconnection agreement pursuant to Section 251 and 252 of the Communications Act of 1934, as amended, and also sought to collect applicable access charges.<sup>12</sup> Halo subsequently refused to pay virtually all intercarrier compensation charges to Windstream and numerous other ILECs, contending that it was a Commercial Mobile Radio Service (CMRS) provider and, because such traffic was at least apparently intraMTA, no reciprocal compensation was due. When faced with a number of state commission proceedings and increasing requests for payment by ILECs, Halo filed a federal lawsuit seeking to stall such efforts, naming Windstream's ILECs and others.<sup>13</sup>

**II. It is Clearly in the Public Interest to Grant the Petition and Provide Similar Relief Sought by All Similarly Situated Rate-of-Return and Price-Cap Carriers**

The public interest warrants grant of the instant request and the extension of this relief, through limited waiver of section 51.917(c) and (d) and 51.915(c) and (d) of the Commission's rules, to all similarly situated rate-of-return and price cap carriers. Grant of the Windstream Petition will avoid penalizing Windstream, its ILECs, as well as other ILECs, for the actions of a single bad actor that gamed the system during a period with particular significance for calculation of revenues going forward.

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<sup>12</sup> See Windstream Petition at 5.

<sup>13</sup> See Windstream Petition at 6-7, citing, *Halo Wireless Services, Inc. v. The Livingston Telephone Company, et al.*, Case No. 11-CV-00359, U.S. N.D. Tex. (filed Jun. 25, 2011). Halo would admit that interim reciprocal compensation was owed while interconnection agreement negotiations were pending, which was the case with Windstream.

### **III. Windstream Has Demonstrated Good Cause for Grant of the Limited Waiver Requested**

The relief requested by Windstream, and a grant of like relief to other similarly situated carriers, clearly meets the good cause standard for waiver of the Commission's rules.<sup>14</sup> Such relief promotes the policy of the rule by enabling an accurate reflection of the appropriate revenues for inclusion in the base period, instead of having those revenues significantly understated due to a unique situation involving the Halo Wireless malfeasance and bankruptcy liquidation. The Halo Wireless situation clearly qualifies as a special circumstance warranting a deviation from the general rules, and grant of the waiver serves the public interest.<sup>15</sup>

Failure to allow inclusion of amounts billed to Halo Wireless during the base period would not only be inequitable given the persistent efforts of carriers to raise this issue with regulators, but would have significant ongoing impacts on support in future years. These impacts will hinder necessary network investments and create an unnecessary obstacle to the Commission's goal of ubiquitous broadband deployment.<sup>16</sup> The harm caused by Halo's arbitrage and subsequent bankruptcy should not be multiplied because these events coincidentally occurred during the base period used for calculation of revenues for the USF reform access recovery calculations.

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<sup>14</sup> See 47 C.F.R. §1.3; see also, *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC has authority to waive its rules if there is 'good cause' to do so."); *USF/ICC Transformation Order* at ¶ 898, n. 1745 (Requests for waiver of the BPR requirement is subject to the Commission's "good cause" waiver standard.)

<sup>15</sup> See *In the Matter of Accipter Communications, Inc. and Qwest Corporation; Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules, Petition for Waiver of Section 69.(e)(11) of the Commission's Rules*, Order, 25 FCC Rcd. 12663, 12665 (2010) ("Accipter"); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>16</sup> See *USF/ICC Transformation Order* at ¶¶ 17 (enumerating principles guiding reforms), and 69 (deployment of broadband to rural areas is one goal of reforms).

#### IV. Conclusion

USTelecom urges the Commission to promptly grant the Petition for limited waiver of 51.915(c) and (d) and extend this relief to all other similarly situated ILECs. Carriers should not suffer ongoing revenue losses due to Halo's malfeasance, nor should unforeseen and unique circumstances due to Halo's bankruptcy and liquidation prevent carriers from including these amounts in their Base Period Revenues. Grant of the instant Petition, and extension of the waiver to other similarly situated carriers, would be consistent with the intent of the rule, as well as the Commission's express commitment to providing certainty, stability, and predictable support as part of the overall reform framework, and would help carriers meet the Commission's goals for improvement and extension of broadband facilities and service.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



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