Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
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 a 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 Reform – Mobility Fund	)	WT Docket No. 10-208

OPPOSITION OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION TO TDS TELECOM'S PETITION FOR WAIVER

The National Cable & Telecommunications Association (NCTA)[1] opposes the petition for waiver filed by TDS Telecommunications Corp. (TDS Telecom).[2] TDS Telecom seeks to include unrecovered revenue that it billed to Halo Wireless, Inc. (Halo) in its 2011 base period

---

1 NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over $185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

2 TDS Telecom Petition for Limited Waiver of 47 C.F.R. Section 51.917(c), WC Docket No. 10-90 *et al*. (Aug. 10, 2012) (Petition for Waiver).

revenue for purposes of determining how much additional support it can receive through the Commission's newly-adopted Access Recovery Charge and universal service high-cost support.[3] The Commission should reject TDS Telecom's petition as it does not meet the requirements specified by the Commission for obtaining a waiver. Furthermore, the public interest would not be served by granting TDS Telecom's petition as this might lead to hundreds of "me too" petitions and would favor TDS Telecom over similarly-situated competitive providers that also were harmed by Halo's bankruptcy.

BACKGROUND

In the *CAF Order* the Commission adopted new rules reforming the intercarrier compensation and universal service high-cost support systems.[4] As part of the reform effort, the Commission adopted bill-and-keep, which requires carriers to recover their network costs from their own end users rather than from other carriers, as the default end state for intercarrier compensation.[5] The Commission also adopted timelines to reduce terminating intercarrier compensation rates down to the bill-and-keep rate of $0 over a period of years.[6]

Although the intercarrier compensation rate reductions apply to all carriers, the Commission provided a subset of these carriers, incumbent local exchange carriers (LECs), with a mechanism to offset their lost intercarrier compensation revenues.[7] Incumbent LECs are allowed to recover the difference between a 2011 baseline amount and the revenue from

---

[3] *Id.* at 2; 47 C.F.R. § 51.917.

[4] *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*CAF Order*).

[5] *Id.* at 17904, ¶ 736.

[6] *Id.* at 17932-36, ¶¶ 798-801.

[7] *Id.* at 17965-67, ¶¶ 864-66.

reformed intercarrier compensation charges through a combination of new end user charges and new universal service high-cost support.[8]

For both price cap regulated incumbent LECs and rate-of-return regulated incumbent LECs like TDS Telecom, the 2011 baseline amount is in part limited to revenues billed and collected by March 31, 2012.[9] The Commission stated that "[c]arriers may, however, request a waiver of our rules defining the Baseline to account for revenues billed for terminating switched access service or reciprocal compensation provided in FY 2011 but recovered after the March 31, 2012 cut-off as the result of the decision of a court or regulatory agency of competent jurisdiction."[10]

TDS Telecom asks the Commission to waive the March 31, 2012 revenue collection deadline to allow it to include in its baseline for recovery revenue that it billed to Halo but that it did not recover, either before or after the March 31st deadline. TDS Telecom alleges that it billed Halo terminating intrastate access charges but Halo refused to pay.[11] Halo subsequently filed for bankruptcy.[12] Although TDS Telecom cites state commission decisions finding that Halo was obligated to pay terminating intrastate access charges, TDS Telecom admits that in no case did a court or a state commission order Halo to pay TDS Telecom a specific amount, nor did TDS Telecom collect payment from Halo as a result of any of the state commission decisions.[13]

---

8 *Id.* at 17957-61, ¶¶ 850-53.

9 47 C.F.R. §§ 51.915(c) (for price cap incumbent LECs), 51.917(b)(7) (for rate-of-return incumbent LECs).

10 *CAF Order*, 26 FCC Rcd at 17982, ¶ 898 n.1745.

11 TDS Telecom Petition at 4-5.

12 *Id.* at 8.

13 *Id.* at 7-9.

I. TDS TELECOM SHOULD NOT RECEIVE ADDITIONAL COMPENSATION BASED ON REVENUE THAT IT NEVER RECEIVED

In providing incumbent LECs with a recovery mechanism to offset their intercarrier compensation losses, the Commission was attempting to balance "the benefits of certainty and a gradual transition" for the incumbent LECs with the "goal of keeping the federal universal service fund on a budget and minimizing the overall burden on end users."[14] As part of that balance, the Commission determined that incumbent LECs' baseline amounts should be limited to revenue that they actually collected, and "shall not include disputed revenues or revenues otherwise not recovered, for whatever reason."[15] TDS Telecom now seeks to evade this requirement and inflate its baseline amount by including revenue that it did not collect from Halo. The Commission provided a narrow exception to this requirement, allowing incumbent LECs to seek a waiver of the March 31, 2012 deadline if revenue was received after that date pursuant to a court or regulatory agency order. TDS Telecom does not have such an order, however, and therefore it does not qualify for a waiver under the terms established by the Commission in the *CAF Order*. Universal service funds should not be used to offset TDS Telecom's business loss due to another company's bankruptcy.

II. TDS TELECOM SHOULD NOT RECEIVE REGULATORY PREFERENCE OVER OTHER HALO CREDITORS

TDS Telecom's petition also should be denied because it has failed to identify any special circumstances that warrant relief pursuant to the Commission's general waiver standard. Halo offered service on a nationwide basis and it is likely that many other companies also were not paid for services they provided to Halo. The broad impact of the Halo bankruptcy on

[14] *CAF Order*, 26 FCC Rcd at 17956, ¶ 847.

[15] *Id.* at 17972, ¶ 880.

telecommunications providers has two significant consequences, both of which caution against granting any relief to TDS.

First, there likely will be dozens, if not hundreds, of incumbent LECs that would file “me too” petitions if the TDS Telecom petition were granted. If the Commission followed the path of making incumbent LECs whole for losses that resulted from the Halo bankruptcy, that could place significant upward pressure on the budget established in the *CAF Order*.

Second, as discussed above, intercarrier compensation recovery support is only available to incumbent LECs; other companies that lose revenue as a result of the reforms, including cable operators, have no ability to receive replacement universal service funding. Because cable operators and other competitive providers also were not paid for services provided to Halo, granting TDS Telecom a waiver of the recovery mechanism rules would provide it with an unwarranted business advantage over non-incumbent LECs that will not have access to that funding mechanism as a way to offset their business losses due to Halo’s bankruptcy.

CONCLUSION

The Commission should deny TDS Telecom's request for waiver. TDS Telecom did not receive revenue from Halo pursuant to any court or regulatory order and therefore it does not meet the waiver requirements established by the Commission in the *CAF Order*. Furthermore, grant of TDS Telecom's petition could lead to numerous "me too" petitions, which would place unwarranted pressure on the budget the Commission established for the high-cost fund and would give TDS Telecom and other incumbent LECs an unwarranted business advantage over competitive carriers that also billed Halo access charges but that cannot access universal service funding to offset any uncollected revenue.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

October 1, 2012