

**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

**COMMENTS OF
ALENCO COMMUNICATIONS, INC.
EASTEX TELEPHONE COOPERATIVE, INC.
LIVINGSTON TELEPHONE COMPANY
NORTH TEXAS TELEPHONE COMPANY
TOTELCOM COMMUNICATIONS, LLC
XIT RURAL TELEPHONE COOPERATIVE, INC.**

Alenco Communications, Inc., Eastex Telephone Cooperative, Inc., Livingston Telephone Company, North Texas Telephone Company, Totelcom Communications, LLC, and XIT Rural Telephone Cooperative, Inc. (CHR¹ ILECs) respectfully file these comments in support of TDS Telecommunications Corporation's (TDS' or TDS Telecom's) request for a limited waiver of the

¹ CHR Solutions, Inc. is a telecommunications consulting firm to rural incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) throughout the United States.

requirement of the *USF/ICC Transformation Order (Order)* that its 2011 Rate-of-Return Carrier Base Period Revenue (CBPR) consist of Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012.² The CHR ILECs are small, rural incumbent local exchange carriers (ILECs) operating under rate of return regulation and certificated in the State of Texas.

The CHR ILECs face the same issues that TDS Telecom describes in its Petition for a Limited Waiver: Halo Wireless, Inc. (Halo) owes the CHR ILECs significant compensation for access services rendered in Fiscal Year 2011. TDS and the CHR ILECs have been placed in a “no win” situation because 47 C.F.R. 51.917(b)(7)(ii)³ does not allow amounts received after March 31, 2012 to be included in Carrier Base Period Revenue (CBPR), and Halo’s Chapter 11, now Chapter 7, bankruptcy protection prohibits a state commission from ordering Halo to make payments to the CHR ILECs even if Halo had sufficient assets to do so.

The CHR ILECs believe TDS has presented a compelling argument to the Commission for the unpaid amounts billed to Halo to be included in TDS’ Based Period Revenues for intrastate usage during Fiscal Year 2011 and to be eligible for recovery under the Commission’ eligible recovery mechanism.

First, TDS addresses the unique circumstances of Halo’s non-payment to TDS’ Subsidiaries. TDS’ Subsidiaries lawfully billed Halo for switched access services in FY 2011. Halo refused to pay, alleging that its traffic was intraMTA wireless traffic, despite numerous state commissions’ determinations cited by TDS that Halo’s traffic is not wireless traffic and is subject

² TDS Telecommunications Corp. Petition for Limited Waiver of Section 51.917(c) of the Commission’s Rules, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket No. 01-92, 96-45; WT Docket No. 10-208 (filed Aug. 09, 2012) (*TDS Petition*)

³ The TDS Petition refers to 47 C.F.R. 51.917(c), but this rule is now renumbered as 47 C.F.R. § 51.917 (b)(7)(ii).

to access charges. TDS also referred to the FCC's own rejection of Halo's claim that it originates intraMTA traffic, and, based upon Halo's description of its traffic flows, the FCC also found that Halo's calls are subject to lawful access charges.⁴ To obtain payment from Halo, TDS Subsidiaries filed complaints with the various state commissions, as did the CHR ILECs and many other rural ILECs across the United States. In response to the mounting complaints, Halo sought bankruptcy protection on August 8, 2011. As explained in the TDS petition, Halo's bankruptcy filing resulted in the Bankruptcy Court's automatic stay order, restricting the state commissions from ordering payment from Halo to the ILEC complainants.

Second, the CHR ILECs support TDS' argument that the unique facts surrounding Halo's non-payments constitute good cause for the Commission to grant TDS' requested waiver because "strict compliance" with § 51.917 (b)(7)(ii) would not be in the public interest under these unique circumstances. TDS' petition refers to two cases that cite principles upon which the FCC may grant good cause waiver in the public interest. *Northeast Cellular Telephone Co. v. FCC, (Northeast)* and *WAIT Radio vs. FCC* affirm that particular facts may render strict compliance to be inconsistent with the public interest,⁵ that application of a rule to a specific case may not serve the public interest, and, that an agency must explain why deviation from a rule better serves the public interest than application of the rule.⁶

Further, TDS points to the Commission's clear intent in Footnote No. 1745 to the *USF/ICC Transformation Order* to allow carriers to request inclusion of eligible revenues collected after March 31, 2012 "as the result of the decision of a court or regulatory agency of

⁴ TDS Petition, Page 9.

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972).

⁶ *Ibid.*

competent jurisdiction.”⁷ However, as TDS explains, the Commission could not have predicted the unique circumstances where “a decision of a court or regulatory agency of competent jurisdiction” would be issued, but rendered useless due to Halo’s retreat into bankruptcy to avoid payment of the significant amounts owed to TDS’ Subsidiaries⁸ (and many other ILECs throughout the United States).

The CHR ILECs agree with TDS that its Subsidiaries have been put in an impossible position without the relief of a limited waiver of § 51.917 (b)(7)(ii). The TDS Subsidiaries and the CHR ILECs stand to lose a portion of their CAF funding because they are not able to include the Halo billed amounts in the eligible recovery mechanism for FY 2011.

As TDS Telecom explains, the amount of eligible recovery for each TDS Subsidiary’s baseline would be reduced by a significant amount, and the reduction in the first year would be compounded in subsequent years. And, as TDS Telecom explains, the loss of significant, otherwise eligible revenue in the first year, with subsequent year impacts, impedes its Subsidiaries’ broadband deployment and service to their customers, as well as the ability to deploy additional network or improvements. TDS points out, “A loss of this amount due solely to the regulatory gamesmanship of Halo is avoidable and not something that TDS Telecom and its customers should have to bear.”⁹

The CHR ILECs find compelling TDS’ point that the Commission’s *USF/ICC Transformation Order* “set forth the public interest obligation for rural ILECs to use support to achieve universal availability of both voice and broadband service.” All Rural ILECs are required to provide such

⁷ TDS Petition, Page 14.

⁸ *Ibid.*, Page 12.

⁹ *Ibid.*, Page 16.

services to high-cost areas at just and reasonable rates. TDS emphasizes that receiving sufficient and predictable funding through the Connect America Fund is necessary for the Subsidiaries to make the right investments and cover the cost of ongoing operations.¹⁰ As TDS states, if the unique and unrecoverable Halo revenues are not included in the eligible recovery baseline, the loss will be perpetuated in successive years, with predictably negative impacts to TDS' ability to meet the Commission's public interest goal of "achieving universal availability of voice and broadband."¹¹

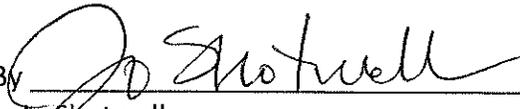
In conclusion, the CHR ILECs respectfully request the Commission grant TDS Telecom's petition for limited waiver of 47 C.F.R. § 51.917 (b)(7)(ii) to allow TDS Telecom to include in its eligible recovery baseline calculation the intrastate revenues billed to Halo by each of the TDS Subsidiaries for usage during FY 2011. Further, given that state commissions across the nation have decided against Halo, the CHR ILECs contend that the Commission should allow all rate-of-return ILECs in this same situation to include FY 2011 intrastate revenues billed to Halo in their eligible recovery baseline calculations.

¹⁰ Ibid.

¹¹ Ibid., Page 17.

Respectfully submitted,

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