

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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 Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Linkup)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**REPLY COMMENTS
OF FIDELITY TELEPHONE COMPANY AND
GRAND RIVER MUTUAL TELEPHONE CORPORATION**

W. R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
Telephone: (573) 635-7166

October 15, 2012

I. INTRODUCTION AND SUMMARY

Fidelity Telephone Company (“Fidelity”) and Grand River Mutual Telephone Corporation (“Grand River”) are small incumbent local exchange telephone companies (“ILECs”) providing service in rural, high-cost areas within the state of Missouri. Fidelity and Grand River are Eligible Telecommunications Carriers (“ETCs”) as defined by the Telecommunications Act (“the Act”), and are “small entities” and “small businesses” as defined by the Federal Communications Commission (“Commission” or “FCC”). Fidelity and Grand River support the Petition filed by TDS Telecommunications Corporation (“TDS”).

II. COMMENTS

A. Halo’s Unlawful Activity in Missouri

Missouri was one of the many states where Halo operated its unlawful scheme. Halo’s actions resulted in lost revenues for ILECs, including Fidelity and Grand River, for service provided to Halo but unpaid for by Halo. After nearly two years of legal maneuvering by Halo, the Missouri Public Service Commission (MoPSC) issued a decision finding that Halo’s scheme was unlawful:

The uncontroverted record in this case shows that Halo has delivered compensable traffic (either access traffic or local reciprocal compensation traffic) and Halo has refused to pay for any of the post-bankruptcy traffic it delivered and continues to deliver to the RLECs, regardless of what rate is billed. Accordingly, the Commission finds that Halo has paid nothing to date for the post-bankruptcy traffic it has delivered to the RLECs.”¹

¹ *Halo Wireless, Inc. v. Craw-Kan Telephone Cooperative, Inc. et al.*, File No. TC-2012-0331, *Report and Order*, issued August 1, 2012, pp. 29-30.

The Missouri Commission’s decision quoted and relied to a significant extent upon the FCC’s earlier decision regarding Halo in its *USF/ICC Transformation Order*. The FCC’s *Order* acknowledged the rural ILECs’ claims that “Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic.”² The FCC’s *Order* agreed with the rural ILEC’s position and rejected Halo’s arguments, concluding that “the ‘reorigination’ 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.”³ Thus, both the Missouri PSC and the FCC have recognized that rural ILECs did not receive “the requisite compensation” for Halo’s use of their networks.

B. The FCC Should Grant the TDS Petition for Waiver.

Fidelity and Grand River support the TDS Petition. TDS and other rural ILECs have already been harmed by Halo’s unlawful activities, and they should not be further harmed by having their lawfully rendered charges for service provided excluded from the revenue recovery mechanism. Fidelity and Grand River concur in the supporting Initial Comments filed by Alenco Communications, Inc. et al., the National Exchange Carrier Association (NECA) et al., and the Independent Telephone and Telecommunications Alliance (ITTA).

C. The Opposition to the TDS Petition is Unconvincing.

Only two comments opposing the TDS Petition were filed, and both of these comments are unconvincing. First, Sprint states that “TDS has not demonstrated any unique circumstances which

² *In the Matter of the Connect America Fund*, WC Docket No. 10-90 et al., *Report and Order*, rel. Nov. 18, 2011, ¶1005.

³ *Id.* at ¶1006.

would justify the instant waiver . . .”⁴ Likewise, the National Cable and Telecommunications Association (NCTA) argues that the TDS Petition should be denied “because it has failed to identify any special circumstances that warrant relief pursuant to the Commission’s general waiver standard.”⁵

Contrary to the arguments of Sprint and NCTA, the circumstances presented by Halo’s nonpayment for service were special and unique. Halo created an elaborate scheme to avoid compensating rural ILECs. Once Halo’s scheme came to light, Halo proceeded to file bankruptcy and effectively prevent rural ILECs from recovering any payment for Halo’s unlawful use of their networks. Thus, Halo’s refusal to pay the lawful rate to TDS and many other carriers for the services Halo received arises out of a unique situation – Halo’s multi-state access rate avoidance scheme.

Halo’s scheme has already harmed TDS and the other carriers. This harm will only be compounded if the recovery mechanism is not adjusted to account for Halo’s non-payment for service provided. The TDS Petition establishes that “Halo’s refusal to pay legitimate intrastate usage charges could hinder TDS Telecom’s ability to recover those charges through the Commission’s eligible recovery mechanism . . .”⁶ The fact that rural carriers such as TDS may continue to be harmed by Halo’s actions on a going-forward basis is clearly a special and unique circumstance that should be addressed by the FCC.

NCTA also complains that granting the TDS Petition would lead to dozens of other “me too”

⁴ Comments of Sprint Nextel Corp., filed October 1, 2012, p. 2 (emphasis added).

⁵ Comments of NCTA, filed October 1, 2012, p. 4 (emphasis added).

⁶ TDS Petition, filed August 9, 2012, p. 2.

petitions filed by other ILECs similarly harmed by Halo's scheme which would place "unwarranted pressure" on the high-cost fund.⁷ NCTA's argument is unpersuasive. First, numerous state commissions such as the Missouri PSC have determined that rural ILECs billed Halo for service provided. But for Halo's unlawful access avoidance scheme, these ILECs would have been compensated for the service they provided. Therefore, the lost revenues resulting from Halo's non-payment should be included in the revenue recovery mechanism because they reflect the most accurate and true cost of services provided and the revenues that should have otherwise been collected by TDS. Second, the question of whether just one ILEC or many ILECs were harmed by Halo's scheme is of no consequence. The FCC's revenue recovery mechanism should be designed to ensure that rural carriers are appropriately compensated for the actual use of their networks.

III. CONCLUSION

Fidelity and Grand River support the Petition for Waiver filed by TDS. If Halo's unpaid billings are not included in the revenue recovery mechanism, then TDS will suffer additional harm because of Halo's wrongdoing.

Respectfully submitted,

By: /s/ Brian T. McCartney

W. R. England, III

Brian T. McCartney

BRYDON, SWEARENGEN & ENGLAND P.C.

312 East Capitol Avenue

Jefferson City, MO 65102-0456

bmccartney@brydonlaw.com

telephone: (573) 635-7166

facsimile: (573) 634-7431

Attorneys for Fidelity and Grand River

⁷ Comments of NCTA, filed October 1, 2012, p. 6.