Before the
FEDERAL COMMUNICATION 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 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 Reform – Mobility Fund	)	WT Docket No. 10-208
	)	

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (TDS Telecom),[1] by counsel and pursuant to the Commission's Public Notice in the above-referenced proceedings,[2] hereby submits these reply comments in connection with the Petition for Limited Waiver (Petition) it filed on August 9, 2012. In that Petition, TDS Telecom demonstrated that good cause exists for

[1] All references in these reply comments to TDS Telecom include the TDS Telecom Subsidiaries identified in Attachment A of TDS Telecom's Petition for Limited Waiver. *See* TDS Telecommunications Corp. Petition for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket 10-90, *et al.,* August 10, 2012.

[2] *See* "Wireline Competition Bureau Seeks Comment on TDS Telecommunications Corporation Petition for Limited Waiver of the Commission's Rules," DA 12-1416, August 30, 2012.

the Commission to grant a limited, narrowly-tailored waiver of its rules because, under the unique circumstances presented in the Petition, TDS Telecom cannot avail itself of the Commission-prescribed mechanism for including certain past-due revenues of Halo Wireless, Inc. (Halo), in its eligible recovery baseline.

The overwhelming majority of entities on whose behalf comments were filed support the Petition. Indeed, nearly every trade association in the telecommunications industry recognizes the unique circumstances described in the Petition and supports it.[3] This should not be surprising. Halo's unlawful access avoidance schemes, which necessitated TDS Telecom's Petition, are well known to the Commission and to the entire telecommunications industry. Indeed, every regulatory authority in the U.S. that has examined Halo's access avoidance practices has found them to be unlawful.[4]

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[3] *See, e.g.,* Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; Eastern Rural Telecom Association; Western Telecommunications Alliance; and the United States Telecom Association, WC Docket No. 10-90, *et al.*, October 1, 2012; Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al.*, October 1, 2012; Comments of Alenco Communications, Inc., Eastex Telephone Cooperative, Inc; Livingston Telephone Company; North Texas Telephone Company; Totelcom Communications, LLC; and XIT Telephone Cooperative, Inc., WC Docket No. 10-90, *et al.*, October 1, 2012.

[4] *See, e.g., In Re Complaint Of Concord Telephone Exchange, Inc., et al. Against Halo Wireless, LLC, Transcom Enhanced Services, Inc. And Other Affiliates For Failure To Pay Terminating Intrastate Access Charges For Traffic And Other Relief And Authority To Cease Termination,* TRA Docket No. 11-00108, Order dated April 18, 2012; *In the Matter of the Complaint of Michigan Bell Telephone Company d/b/a AT&T Michigan against Halo Wireless, Inc., to authorize AT&T Michigan to discontinue service to Halo Wireless, Inc., and for other relief,* Michigan PSC Case No. U-17018, Order dated June 26, 2012; *Complaint of TDS Telecom against Halo Wireless, Inc. Transcom Enhanced Services, Inc., and other Affiliates for failure to pay Terminating Intrastate Access Charges for traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic,* Georgia PSC Docket No. 34219, Commission Ruling on July 12, 2012; *In Re: Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Sought Carolina v. Halo Wireless, Incorporated for Breach of the Parties' Interconnection Agreement,* PSC South Carolina Docket No. 2011-304-C, Order dated July 17, 2012; *Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Service, Inc.,* PSC of Wisconsin Docket No. 9594-TI-100, Order dated July 27, 2012; *Halo Wireless, Inc. v. Craw-Kan Telephone Cooperative, et al.,* Missouri Public Service Commission, File No. TC-2012-0331, Report and Order issued August 1, 2012.

Unfortunately, these regulatory authorities were not able to order Halo to make payment because on August 8, 2011, Halo sought bankruptcy protection. As explained in the Petition, the automatic stay order accompanying Halo's bankruptcy proscribes regulatory authorities from ordering "the amount of any claim against Halo or . . . which affects the debtor-credit relationship."[5] These unique circumstances were not -- and could not have been -- envisioned by the Commission when it established the mechanism for calculating a rate-of-return carrier's eligible recovery baseline. It is for this reason that the relief sought in the Petition is warranted.

In its *Transformation Order,* the Commission made a number of policy decisions. Among them was the way in which a rate-of-return carrier's eligible recovery baseline should be calculated, and, importantly, the mechanism through which such a carrier can include in its baseline "revenues billed for terminating switched access service or reciprocal compensation provided in FY2011 but recovered after the March 31, 2012 cut-off."[6] That mechanism requires the recovery to be "the result of the decision or a court or regulatory agency of competent jurisdiction."[7] But the *Transformation Order* did not address circumstances where, as here, a regulatory agency of competent jurisdiction has determined that payment is owed but is prevented by law from ordering it (and thus ensuring recovery) due to the bankruptcy of the owing carrier.

TDS Telecom's Petition is intended to address and remedy this gap in the recovery mechanism. Contrary to the claims of Sprint Nextel Corporation (Sprint) and

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[5] *In re: Halo Wireless, Inc.* Case No. 11-42464, Bkrtcy, E. D.. Tex., *Order Granting Motion of TDS to Determine Automatic Stay Is Not Applicable, or Alternatively, to Lift the Automatic Stay Without Waiver of 30-Day Hearing Requirement* (October 26, 2011) , at 2.

[6] *Transformation Order* at ¶ 898, n.1745.

[7] *Id.*

the National Cable & Telecommunications Association (NCTA) -- the only two entities to oppose the Petition -- TDS Telecom is not seeking to "evade" the requirements of the *Transformation Order* or to secure special treatment.[8] To the contrary, the Petition seeks a limited waiver so that TDS Telecom can *achieve* the policy goals set forth in the *Transformation Order* that otherwise cannot be achieved due to the unique circumstances set forth in the Petition.

Contrary to the assertions of Sprint and NCTA, the circumstances presented by TDS Telecom in its Petition *are* unique. This is not a situation in which a carrier is simply grousing over a failure to recover amounts owed. Nor is this a situation in which there is a billing dispute that will be resolved in due time. To the contrary, TDS Telecom carefully and deliberately billed Halo for the amounts owed, retained accurate billing records, and when payment was not forthcoming pursued Halo vigorously by taking legal action before state regulatory commissions. Indeed, many of these actions preceded the issuance of the *Transformation Order* and the creation of the recovery mechanism. The simple fact is that despite all of its diligent efforts, TDS Telecom was not -- and will not be -- able to recover payment from Halo.

The uniqueness of TDS Telecom's circumstances are attributable not only to the steps the company took to bill and pursue payment from Halo; they also are attributable to the fact that the mechanism in the *Transformation Order* intended to provide TDS Telecom with a way to include in its eligible recovery baseline revenues recovered after the March 31, 2012, cut-off was prevented from working by operation of law. The

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[8] *See* Opposition of the National Cable & Telecommunications Association to TDS Telecom's Petition for Waiver, WC Docket No. 10-90, *et al.*, October 1, 2012, at 4; Comments of Sprint Nextel Corporation, WC Docket No. 10-90, *et al.*, October 1, 2012, at 3.

Commission clearly intended to permit rate-of-return carriers to account for revenues not collected before March 31, 2012, "as the result of the decision of a court or regulatory agency of competent jurisdiction." Even Sprint and NCTA do not dispute that. Furthermore, as the facts make clear, there is every reason to believe that TDS Telecom would have secured the necessary regulatory agency decisions to meet this requirement but for the automatic stay imposed by Halo's bankruptcy filing. The recovery mechanism simply failed to account for the possibility that it could not work under these unique circumstances. These circumstances therefore support a limited waiver.

Sprint and NCTA make a small handful of other arguments to oppose the relief sought in the Petition. They, too, are unavailing. The relief sought by TDS Telecom would not, as Sprint claims, "threaten[] the Commission's commitment to constraining the size of the [Universal Service Fund]."[9] A grant of TDS Telecom's Petition would have no effect whatsoever on the overall size of the Fund. It would affect only the calculation of TDS Telecom's eligible recovery baseline within the constraints of the existing Fund. A grant also would not somehow be unfair, as NCTA suggest, to cable operators and non-incumbent local exchange carriers "who also were not paid for services provided to Halo."[10] A grant would not result in Halo paying TDS Telecom anything; it would only permit TDS Telecom to include in its eligible recovery baseline amounts already sanctioned as a matter of policy in the *Transformation Order*. Stripped of rhetoric, the issues raised by Sprint and NCTA amount to little more than complaints about broader policy decisions made by the Commission in the *Transformation Order.*

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[9] Comments of Sprint Nextel Corporation at 2.

[10] Opposition of the National Cable & Telecommunications Association at 5.

The time for seeking reconsideration of those decisions is past,[11] and, in any event, TDS Telecom's Petition is not the right vehicle for them.

NCTA also claims that a grant of the Petition will result in the filing of "me too" petitions by other carriers.[12] TDS Telecom cannot predict what other carriers will do, and the extent to which they, too, may present the sort of qualifying circumstances required to secure a limited waiver of a Commission regulation. Regardless, that others may seek similar relief is not a basis for denying it where an appropriate showing has been made and the public interest standard has been met. This undoubtedly is the case here.

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[11] *See* 47 C.F.R. § 1.429(d) (requiring petitions for reconsideration of Commission decisions to be filed within 30 days from the date of public notice of such action). The deadline for filing petitions for reconsideration of the *Transformation Order* was December 29, 2011.

[12] Opposition of the National Cable & Telecommunications Association at 5.

Conclusion

The overwhelming majority of entities on whose behalf comments were filed support TDS Telecom's Petition and none of the objections raised by Sprint or NCTA are credible or determinative here. TDS Telecom has presented unique facts and circumstances in its Petition and the Commission should grant it forthwith.

Respectfully submitted,

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