

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

In the Matter of)	
)	WC Docket Nos. 10-90, 07-135, 03-109,
Petition of Cimarron Telephone Company,)	GN Docket No. 09-51, CC Docket Nos. 01-
Cross Telephone Company, and)	92, 96-45, WT Docket No. 10-208
Pottawatomie Telephone Company)	
For Limited Waiver of 47 C.F.R. 51.917(c))	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

Pursuant to the Wireline Competition Bureau’s Public Notice,¹ the United States Telecom Association (USTelecom)² respectfully submits these comments in support of the Petition for Limited Waiver (*Petition*) filed November 19, 2012, by Cimarron Telephone Company, Cross Telephony and Pottawatomie Telephone Company (Petitioners). The Petitioners seek limited waiver of the requirements set forth in Section 51.917(c) of the Commission’s rules to “allow them to include in their 2011 Base Period Revenues amounts billed, due and owing from Halo Wireless, Inc. ... for intrastate usage during Fiscal Year 2011.”³

USTelecom believes that the Petitioners and all other similarly situated carriers should be able to include the 2011 ICC payments Halo owes in their Eligible Recovery baseline revenues. If there had been any question before as to Halo’s unwillingness to pay amounts due, it is now

¹ See Public Notice, “Wireline Competition Bureau Seeks Comment on Petition for Limited Waiver of the Commission’s Rules Filed by Cimarron Telephone Company, Cross Telephone Company, and Pottawatomie Telephone Company,” DA 12-1939 (rel. December 3, 2012).

² USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

³ See *Petition* at 2.

abundantly clear that, due to its Chapter 11 bankruptcy filing⁴ and subsequent decision to liquidate,⁵ Halo will never pay the ICC charges it owes to carriers like the Petitioners. For years, carriers and state regulators have 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 the latest turn in a long-twisting saga that made it impossible to collect any payments by early 2012, and now makes it impossible to collect any payments at all. As described in the *Petition*, fundamental fairness and the public interest dictate that the Commission waives section 51.917(c) for all rate of return carriers harmed by Halo's access avoidance schemes. 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, Inc. for intrastate usage during fiscal year 2011.

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,⁶ 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

⁴ 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.”).

⁵ *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).

⁶ *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).

perpetrated an enormous and continuing arbitrage scheme and then decided to pursue bankruptcy liquidation, making it impossible for carriers to order or enforce payment.

For years, Halo Wireless forwarded traffic for termination on ILEC networks without placing access service orders or entering into interconnection agreements with terminating carriers.⁷ 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.”⁸

The Petitioners state that they began receiving traffic from Halo Wireless to terminate in December of 2010.⁹ By March 2011, Petitioners determined, based on review of SS7 data, that most of the traffic they were terminating from Halo Wireless was wireline intrastate access or non-Halo Wireless inter-MTA traffic and began issuing access charge invoices to Halo Wireless in conformity with their access tariffs which were not paid.¹⁰

Of greatest significance to the question presented by the *Petition*, the traffic received by the Petitioners from Halo was “normal” traffic that, *absent the “wireless in the middle”*

⁷ Halo did enter into interconnection agreements with several price cap carriers for its “wireless” traffic, but these carriers eventually discovered the vast majority of Halo’s traffic was in fact wireline-originated. *See, e.g., BPS Telephone, et al. v. Halo Wireless*, Docket No. 2011-0404, Complaint, para. 43 Missouri PSC (filed June 22, 2011) (“appears as much as 70% of Halo’s traffic is intrastate interexchange wireline originated traffic”).

⁸ *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*), para. 1006.

⁹ *See Petition* at 4.

¹⁰ *Id* at 5.

*arbitrage by Halo Wireless, would have come through another carrier as access traffic and the access revenues would have been paid and included in the 2011 base period.*¹¹

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

The public interest warrants grant of the request of the Petitioners and the extension of this relief, through limited waiver of section 51.917(c) and 51.915(c) of the Commission's rules, to all similarly situated rate-of-return and price cap carriers. Grant of the Petition will avoid penalizing rural Oklahomans, and all Americans, because of the actions of a provider gaming the system during a period with particular significance for calculation of revenues going forward.

III. The Petitioners Have Demonstrated Good Cause for Grant of the Limited Waiver Requested

The relief requested by the Petitioners, and a grant of like relief to other similarly situated carriers, clearly meets the good cause standard for waiver of the Commission's rules.¹² Such relief promotes the policy of the rule by enabling an accurately 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.¹³

¹¹ *Id.*

¹² See 47 C.F.R. Sec. 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.") Requests for waiver of the baseline access revenues is subject to the Commission's "good cause" waiver standard. *USF/ICC Transformation Order*, para 898, n. 1745.

¹³ 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).

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.¹⁴ 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.

IV. Conclusion

USTelecom urges the Commission to promptly grant the *Petition* for a limited waiver of 51.917(c) and extend this relief, through limited waiver of section 51.917(c) for rate-of-return carriers and 51.915(c) for price cap carriers, 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

¹⁴ See *USF/ICC Transformation Order*, paras. 17 (enumerating principles guiding reforms), and 69 (deployment of broadband to rural areas is one goal of reforms).

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,

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