

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 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

EMERGENCY REQUEST FOR EXPEDITED TREATMENT

**PETITION OF GUADALUPE VALLEY TELEPHONE COOPERATIVE FOR LIMITED
WAIVER OF 47 C.F.R. § 51.917(c)**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Guadalupe Valley Telephone Cooperative (“GVTC” or the “Company”) hereby requests a limited waiver of 47 C.F.R. Section 51.917(c).² As explained herein, GVTC seeks to include amounts owed to the Company by Halo Wireless, Inc. (“Halo”) in Fiscal Year 2011 in its Carrier Base Period Revenue. Exclusion of the amount owed to GVTC in the Carrier

¹ 47 C.F.R. § 1.3.

² *Id.* at 51.917(c).

Base Period Revenue has a significant adverse impact on GVTC's recovery mechanism funding, which in turn has challenged GVTC by limiting the Company's ability to invest in and improve its network. GVTC seeks to include these amounts, which were billed to Halo but not collected by March 31, 2012, in the Base Period Revenue effective July 1, 2012. The Commission has good cause to grant GVTC's request, and furthermore grant of this waiver is squarely in the public interest and is the appropriate course of action to meet the objectives of the November 2011 *USF/ICC Transformation Order*. GVTC respectfully requests emergency expedited attention to this matter.

I. BACKGROUND

GVTC is a rural incumbent local exchange carrier ("RLEC") operating in remote parts of Texas Hill Country and rural areas north of San Antonio. GVTC, the largest telephone cooperative in Texas, is a comprehensive communications provider with a long history of technical innovation and a strong bond with its local communities. GVTC provides telephone service to approximately 37,000 access lines in its service area. GVTC relies on predictable and sufficient Universal Service Fund ("USF") support and intercarrier compensation ("ICC") mechanisms to deliver quality voice and data services at reasonable costs to consumers. Given GVTC's rural and remote service area, predictable and sufficient support is imperative to the company's ability to continue providing quality services at reasonable costs—the series of unfortunate events described herein undermines and frustrates GVTC's mission.

These unfortunate events involving Halo led to GVTC's decision to file this Petition and seek relief from the adverse impact of uncollected amounts owed to the Company by Halo on the Company's recovery mechanism funding. The events described below have produced a double

penalty for GVTC, as the Company will never receive the amounts owed by Halo *and* the negative impact on the Company's recovery mechanism funding puts GVTC in a precarious position where seeking relief from the Commission is the only viable option left at this point. GVTC was essentially a victim of an access arbitrage scheme, the impact of which is further amplified by the company's inability to include the amounts billed to Halo in its Base Period Revenue, leaving GVTC deprived of both revenue it should have collected from Halo and fairly assessed recovery mechanism funding. GVTC has no choice but to accept the loss attributed to the uncollected revenue, but the Company is determined to utilize the Commission's waiver process to seek fairly assessed recovery mechanism funding.

GVTC initially began terminating Halo's traffic around August of 2010, and then began billing Halo for terminating its intrastate access traffic pursuant to the rates, terms and conditions set forth in applicable GVTC tariffs. Halo subsequently refused to pay all intercarrier compensation charges to GVTC and numerous other ILECs.³ Halo erroneously argued that it was a Commercial Mobile Radio Service ("CMRS") provider and all of its traffic delivered to GVTC and other ILECs was intraMTA CMRS and that no compensation was due for transport and termination of its traffic, which resulted in disputes with ILECs that have been documented extensively in FCC and various state commission proceedings. In the *USF/ICC Transformation Order*, the FCC rejected Halo's claim that its traffic was intraMTA CMRS, stating "We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider;" and "we agree

³ GVTC participated in an arbitration proceeding against Halo before the Public Utility Commission of Texas and presented evidence regarding Halo's terminating usage and the appropriate intercarrier compensation due for such traffic. Within this proceeding, the Texas Commission's arbitrators determined that GVTC had properly jurisdictionalized Halo's traffic and applied the appropriate rates for each jurisdiction, which forms the basis of the Cooperative's claim herein. See *Petition of Eastex Telephone Cooperative, Inc. for Compulsory Arbitration with Halo Wireless, Inc. Under the Federal Telecommunications Act Relating to Interconnection Rates, Terms and Conditions, Docket No. 40032 (Consolidated), Arbitration Award, (Sept. 25, 2012)*.

with NECA that the ‘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 the purposes of reciprocal compensation and we disagree with Halo’s contrary position.”⁴

GVTC and other small and rural ILECs in Texas pursued complaint cases under state law and arbitration cases under federal law against Halo in an effort to stop Halo’s arbitrage scheme in the spring and summer of 2011. The Texas Commission consolidated those arbitration cases for purposes of hearing. However, before all of the rural ILECs were able to file for arbitration due to the arbitration window under Federal Telecommunications Act of 1996 (“FTA”) Section 252, Halo filed for bankruptcy on August 8, 2011 thereby temporarily staying all regulatory proceedings against Halo until the Bankruptcy Court was able to hear arguments and lift the stay. Halo also sought to delay resolution of the cases pending before the Texas Commission by requesting stays in both federal and district court, all of which were ultimately denied, but were time and resource intensive. In the spring of 2012, the Texas Commission was finally able to hold a hearing on the merits and testimony was presented in the pending arbitration cases. In September of 2012, a final Arbitration Award was released resolving the arbitration cases including the forward-looking interconnection agreements, but Halo had been forced from Chapter 11 to Chapter 7 bankruptcy and the Texas Commission dismissed the case because, at that point, Halo had ceased operations and its assets were being liquidated, negating the need for a forward-looking final interconnection agreement between the parties.

To further aggravate the difficulties in collecting billed intrastate access fees from Halo, who steadfastly refused to pay lawfully-assessed invoices to ILECs across the country, Halo’s

⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011). ¶ 1006.

estate lacks assets to pay the amounts owed to GVTC or any other ILECs that were harmed in this convoluted arbitrage scheme. GVTC cannot simply get in line and wait for a reasonable settlement because the Commission required that all revenues included in calculating Base Period Revenue had to be collected before March 31, 2012. Accordingly, the negative revenue impact associated with Halo's unpaid debt has ultimately created an unfair annual revenue hit for GVTC. The Company has no alternative recourse but to seek waiver from the Commission, and as explained below, the Commission has good cause to grant this waiver.

II. GOOD CAUSE EXISTS TO GRANT GVTC'S REQUESTED WAIVER

In general, the FCC's rules may be waived for good cause shown.⁵ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁶ The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷

The Commission anticipated that there would be circumstances similar to this where revenues associated with FY 2011 were not able to be collected by March 31, 2012 and allowed for a waiver of the March 31, 2012 deadline in its USF-ICC Transformation Order.⁸

Specifically, the Commission stated:

Carriers 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 FY2011 but recovered after the March 31, 2012 cut-off as the result of the decision of a court or regulatory agency of competent

⁵ 47 C.F.R. § 1.3.

⁶ See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

⁷ See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

⁸ See *USF/ICC Transformation Order* at footnote 1745.

jurisdiction. The adjusted Baseline will not include settlements regarding changes after the March 31, 2012 cut-off, and any carrier requesting such modifications to its Baseline shall, in addition to otherwise satisfying the waiver criteria, have the burden of demonstrating that the revenues are not already in its Baseline, including providing a certification to the Commission to that effect. Any request for a waiver should also include a copy of the decision requiring payment of the disputed intercarrier compensation. Any such waiver would be subject to the Commission's traditional "good cause" waiver standard, rather than the Total Cost Earnings Review specified below.

The overall purpose of GVTC's waiver petition is consistent as it would allow the company to include revenues associated with FY 2011 that were billed but not collected due to a combination of unfortunate factors (including Halo's bankruptcy) which were beyond GVTC's control, as outlined above.

GVTC's argument for good cause is furthermore supported by two other similar pending waiver petitions by other ILECs that face undue hardship as a result of the Halo events. TDS Telecommunications Corp. ("TDS Telecom") filed a petition for a limited waiver "to permit TDS Telecom to include within its Base Period Revenues unpaid amounts billed to Halo Wireless, Inc. for intrastate usage during Fiscal Year 2011, thereby rendering those amounts eligible for recovery pursuant to the Commission's eligible recovery mechanism."⁹ Like GVTC, TDS Telecom does not ever expect to collect the amounts it billed to Halo as a result of Halo's bankruptcy and subsequent liquidation of assets. TDS asserts that "fundamental fairness and the public interest dictate that the Commission waive its rules in this specific scenario," and the FCC "could not have predicted every permutation through which a carrier such as Halo would develop an elaborate scheme to avoid paying access charges in a way that would have such potential long-term revenue ramifications...due to the nature of the eligible recovery mechanism."¹⁰

⁹ See Petition of TDS Telecommunications Corp. for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket No. 10-90 *et al.* (filed Aug. 10, 2012) ("TDS Petition") at 2.

¹⁰ *Id.* at pg. 3-4 and 12.

GVTC echoes these statements and emphasizes that the loss created by Halo’s refusal to pay access charges, Halo’s subsequent bankruptcy and the fact that it will *never* pay what it owes GVTC for services, and the circumstantial reduction in eligible recovery that would not have occurred except for the fact that the Halo situation unfortunately occurred at a time when the FCC was making monumental changes to the USF and ICC mechanisms all constitute good cause in favor of granting GVTC’s requested relief.

Likewise, three small Oklahoma ILECs (Cimarron Telephone Company, Cross Telephone Company, and Pottawatomie Telephone Company) filed a similar petition, arguing that “Halo’s scam distorts the 2011 Base Period Revenue rules’ impact on the Petitioners, cutting their future support and crippling their network investment,” and insisting that “the statutory goal of universal service—promoting and assuring the availability of quality services at just, reasonable, and affordable rates in rural areas—will be significantly compromised by strict adherence to the 2011 Base Period Revenue rules.”¹¹ Like GVTC, the three Oklahoma ILECs are seeking relief from the Commission as there are no alternatives for reversing the financial damages caused by the Halo events. GVTC agrees with the Oklahoma ILECs that “Excluding the lost revenues unfairly penalizes Petitioners for the sole reason that they had the misfortune of being subject to an arbitrage scam that coincided with the 2011 Base Period.”¹² The United States Telecom Association (“USTelecom”) filed comments in support of the Oklahoma ILECs wherein USTelecom states that “the Petitioners and *all other similarly situated carriers* should

¹¹ See Petition of Cimarron Telephone Company, Cross Telephone Company, and Pottawatomie Telephone Company for Limited Waiver of 47 WC Docket No. 10-90 *et al.* (filed Nov. 19, 2012) (“Oklahoma ILEC Petition”) at iv.

¹² *Id.* at 9.

be able to include the 2011 ICC payments Halo owes in their Eligible Recovery baseline revenues” (emphasis added).¹³

The loss imposed on GVTC by the combined effects of Halo’s debt to the Company and the prospect of basing all future years’ recovery mechanism funding on a lower amount than it should be based upon is indeed real. The resulting negative impacts on network investment in future years and ultimately on the services delivered to GVTC’s customers will be significant if the petition is not granted. Grant of this waiver is in the public interest. The Base Period Revenue is a critical starting point to calculate the Company’s Eligible Recovery and is part of the transitional recovery mechanism established by the Commission expressly to mitigate the impact of *USF/ICC Transformation Order* on carrier revenues and investments. Grant of this limited waiver would allow the initial calculation of Eligible Recovery to accurately represent the Company’s FY 2011 Base Period Revenue. Further, grant of the limited waiver would serve the public interest in that GVTC would be able to continue to serve its customers consistent with the FCC’s National Broadband Plan, USF Reform, and IP Transition goals while having the benefit of the transitional recovery mechanism to the full extent intended by the Commission.

III. REQUESTED RELIEF

For the reasons stated above, pursuant to Section 1.3 of the Commission’s rule, GVTC hereby respectfully requests that the Commission include in the Company’s Base Period Revenue \$278,317.62 which was the amount that the Public Utility Commission of Texas determined was owed to GVTC as detailed in Attachment A. GVTC requests that this amount be included retroactively in the Base Period Revenue effective as of July 1, 2012. GVTC has

¹³ See Comments of the United States Telecom Association WC Docket No. 10-90 *et al.* (filed Jan. 2, 2013) (“USTelecom Comments”) at 1.

shown good cause for the Commission to grant this limited waiver, and urges the Commission to expeditiously address the petition.

Respectfully submitted,

/s/ Robert A. Hunt

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Attachments

Guadalupe Valley Telephone Cooperative, Inc.

Month	MOUs			Composite Rates			Revenues			
	Local	Intrastate	Interstate	Local	Intrastate	Interstate	Local	Intrastate	Interstate	Total
Oct-10	0	587,696	677,228	0.00818	0.0476	0.03096	\$0.00	\$27,974.33	\$20,966.98	\$48,941.31
Nov-10	0	516,468	595,149	0.00818	0.0476	0.03096	\$0.00	\$24,583.88	\$18,425.81	\$43,009.69
Dec-10	0	479,594	552,657	0.00818	0.0476	0.03096	\$0.00	\$22,828.67	\$17,110.26	\$39,938.94
Jan-11	0	277,521	319,799	0.00818	0.0476	0.03096	\$0.00	\$13,210.00	\$9,900.98	\$23,110.98
Feb-11	500,461	285,341	328,811	0.00818	0.0476	0.03096	\$4,093.77	\$13,582.23	\$10,179.99	\$27,855.99
Mar-11	567,628	323,637	372,941	0.00818	0.0476	0.03096	\$4,643.20	\$15,405.12	\$11,546.25	\$31,594.57
Apr-11	677,030	386,013	444,820	0.00818	0.0476	0.03096	\$5,538.11	\$18,374.22	\$13,771.63	\$37,683.95
May-11	824,664	470,187	541,817	0.00818	0.0476	0.03096	\$6,745.75	\$22,380.90	\$16,774.65	\$45,901.31
Jun-11	701,409	399,913	460,837	0.00818	0.0476	0.03096	\$5,737.53	\$19,035.86	\$14,267.51	\$39,040.90
Jul-11	552,928	315,255	363,282	0.00818	0.0476	0.03019	\$4,522.95	\$15,006.14	\$10,967.48	\$30,496.57
8/1/2011 (pre)	192,720	109,880	126,620	0.00818	0.0476	0.03019	\$1,576.45	\$5,230.29	\$3,822.66	\$10,629.40
8/1/2011 (post)	587,358	334,460	493,777	0.00704	0.0476	0.02975	\$4,135.00	\$15,920.30	\$14,689.87	\$34,745.16
Sep-11	807,207	464,500	639,299	0.00704	0.0476	0.02975	\$5,682.74	\$22,110.20	\$19,019.15	\$46,812.08
							\$42,675.49	\$235,642.13	\$181,443.22	\$459,760.84
										\$278,317.62

Total Eligible Recovery Amount (Local + Intrastate)

Declaration of Robert A. Hunt

1. My name is Robert A. Hunt and I am Vice President – Regulatory Affairs and Business Operations for Guadalupe Valley Telephone Cooperative, Inc. (GVTC).
2. I certify that none of the amounts owed by Halo Wireless, Inc. that are the subject of the Petition for Limited Waiver were included in GVTC's Eligible Recovery Amount baseline filings with the FCC.
3. The calculations in Attachment A accurately reflect the proper jurisdictionalization of minutes of use and rates as determined in the Public Utility Commission of Texas's Arbitration Award in Docket No. 40032 (consolidated) for Halo Wireless' traffic terminated by GVTC between October 1, 2010 and September 30, 2011.
4. I declare under penalty of perjury that the facts contained in the Declaration, and in the Petition for Limited Waiver are true and correct to the best of my knowledge, information and belief.

A handwritten signature in cursive script, reading "Robert A. Hunt", is written over a horizontal line.

Robert A. Hunt
Vice President – Regulatory Affairs and Business Operations
Guadalupe Valley Telephone Cooperative, Inc.

March 6, 2014