

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 WILKES TELEPHONE MEMBERSHIP CORPORATION FOR
LIMITED WAIVER OF 47 C.F.R. § 51.917(c)**

Wilkes Telephone Membership Corporation (“Wilkes”), pursuant to Section 1.3 of the rules of the Federal Communications Commission (“Commission”),¹ hereby requests a limited waiver of 47 C.F.R. Section 51.917(c).² As explained herein, Wilkes seeks to include Fiscal Year 2011 usage amounts billed to and owed by Halo Wireless, Inc. (“Halo”) in its Carrier Base Period Revenue. Because Wilkes has not been able to include the amount billed to and not paid by Halo in the Carrier Base Period Revenue, there is a negative impact on its recovery mechanism

¹ 47 C.F.R. § 1.3.

² *Id.* at 51.917(c).

funding. This has limited the ability to invest in and improve its network. Wilkes seeks to include the Fiscal Year 2011 amount, which was billed to Halo but not collected by March 31, 2012, in the Base Period Revenue that became effective July 1, 2012. The Commission has good cause to grant Wilkes' request. Grant of this waiver is in the public interest and is an appropriate course of action to meet the objectives of the November 2011 *USF/ICC Transformation Order*. Wilkes respectfully requests emergency expedited attention to this matter.

I. BACKGROUND

Wilkes is a rural incumbent local exchange carrier ("RLEC") headquartered in Wilkesboro, North Carolina. Wilkes is a community based telephone cooperative operating in some mountainous rural areas of western North Carolina. Wilkes has a long history of technical innovation and a strong bond with its local communities. Wilkes provides telephone service to approximately 8,900 access lines in its service area. Wilkes 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. Wilkes' residential local monthly rate is currently above the Commission's rate floor. Wilkes' rural and spread out service area make a predictable and sufficient support important to the company's ability to continue providing quality services at reasonable costs.

Halo operated an access arbitrage scheme and refused to pay for legitimate interstate access, intrastate access, and Commercial Mobile Radio Service ("CMRS") traffic. This prevented Wilkes from being able to include the amounts billed to Halo in its Base Period Revenue. The refusal of Halo to pay caused a reduction in Wilkes' recovery mechanism funding

which continues today. It is because of this that Wilkes is filing this Petition to seek relief from the adverse impact of uncollected amounts from Halo on Wilkes' recovery mechanism funding. The events described below have produced a double penalty for Wilkes, because we will never receive the amounts owed by Halo and that then has a negative recurring impact to our recovery mechanism funding that continues to cause financial harm. The only remaining and viable option is to seek relief from the Commission.

Wilkes initially began terminating Halo's traffic in December 2010 and quickly saw the traffic volume grow. Wilkes accessed its SS7 calling records and analyzed the traffic to determine the proper jurisdiction of each call. In other words, Wilkes was able to see what volume of traffic sent by Halo was originated from cellular carriers and what was originated from landline carriers and was able to determine what landline calls were intrastate and what calls were interstate. Wilkes billed Halo based on whether it was cellular or landline and the jurisdiction of landline calls. Wilkes used the same rates it used to bill for other wireless, intrastate access, and interstate access calls. Wilkes ended up billing Halo for traffic it sent during the period of January 2011 through August 2012. The total amount billed for 21 months of traffic sent by Halo totaled almost \$476,000. Halo did not pay any invoices and in fact disputed charges more than once. Had this traffic been sent to Wilkes by almost any other carrier then the amounts hopefully would have been paid.

Halo fraudulently stated that it was a CMRS provider and that it only delivered intraMTA CMRS traffic and that no compensation was due for transport and termination of its traffic. The Commission and state commissions have seen numerous complaints and documentation about this.

Wilkes participated with a group of Eastern Rural Telecom Association member companies in a teleconference call with Wireline and Wireless Bureau staff on July 8, 2011. The

purpose of the call was to discuss “phantom traffic and traffic laundering experienced by rural LECs as a result of Halo Wireless.”³ During the call there was discussion about the “results of a one day study of Halo traffic which showed that the traffic was originated from customers of 176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies, none of which was Halo Wireless.”⁴

In the *USF/ICC Transformation Order*, the Commission rejected Halo’s claim that its service took access traffic and made it wireless by stating “one wireless service provider claims that calls that it receives from other carriers, routes through its own base stations, and passes on to third-party carriers for termination have “originated” at its own base stations for purposes of applying the intraMTA rule. As explained below, we disagree.”⁵

Wilkes participated in a Halo related proceeding, Docket No. P-55, Sub 1841, before the North Carolina Utilities Commission (“NCUC”) that was started when AT&T North Carolina filed a complaint on July 25, 2011 against Halo for violating terms of a wireless Interconnection Agreement by sending landline traffic instead of wireless and by “consistently altering the Charge Party Number.”⁶ Halo filed for Chapter 11 bankruptcy on August 8, 2011 and then Chapter 7 bankruptcy on July 13, 2012. The NCUC did not issue its first relief order until September 27, 2012 long after Halo had filed for bankruptcy and stopped routing traffic.

In its *USF/ICC Transformation Order*, the Commission established that Rate-of-Return LECs Base Period revenues would be based on net wireless and intrastate terminating access revenues billed for usage from fiscal year 2011 along with the forecasted interstate revenue

³ Letter from Eastern Rural Telecom Association, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed July 8, 2011).

⁴ Id.

⁵ 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*”), ¶ 979.

⁶ See Complaint and Petition For Expedited Relief filed by BellSouth Telecommunications, LLC d/b/a AT&T North Carolina in North Carolina Utilities Commission Docket P-55, Sub 1841 (filed July 25, 2011) at 4.

requirement. The Commission also stated that only FY2011 wireless and intrastate revenues that were collected by March 31, 2012 would count towards the Base Period revenues. Halo never paid Wilkes' invoices which caused financial harm that continues to perpetuate itself as the Base Period Revenues are stepped down annually.

Wilkes did submit a bankruptcy Proof of Claim in December 2012. It is Wilkes' understanding that Halo's estate does not have the assets to pay the amounts owed to Wilkes or any other ILECs that were financially harmed in this fraudulent access arbitrage scheme. Wilkes' remaining recourse is to seek waiver from the Commission. As explained below the Commission has good cause to grant this waiver.

II. THERE IS GOOD CAUSE TO GRANT THE REQUESTED WAIVER

The Commission's rules may be "waived for good cause shown."⁷ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁸ 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.⁹

The Commission recognized that there would be situations where carriers would not collect all revenues associated with FY 2011 usage by March 31, 2012 and allowed for a waiver of the March 31, 2012 deadline in its *USF-ICC Transformation Order*. 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

⁷ 47 C.F.R. § 1.3.

⁸ 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*").

⁹ 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).

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.¹⁰

There is good cause to grant Wilkes' waiver petition because it would allow revenues associated with FY 2011 that were billed to Halo, although not collected due to an apparent scheme of Halo and their ultimate bankruptcy, to be included in the Baseline revenue. The loss created by Halo's refusal to pay access charges, a subsequent bankruptcy and the fact that it will never pay what it owes Wilkes for services has been compounded by the circumstantial reduction in eligible recovery. This recurring impact 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 of these reasons make up good cause in support of the Commission granting Wilkes' requested relief.

Wilkes' argument for good cause is further supported by four other previously filed and pending waiver petitions by other ILECs that also 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."¹¹ TDS Telecom does not ever expect to collect the amounts it billed to Halo as a result of Halo's

¹⁰ See *USF/ICC Transformation Order* at footnote 1745.

¹¹ 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) at 2.

bankruptcy and subsequent liquidation of assets. TDS Telecom asserts that “fundamental fairness and the public interest dictate that the Commission waive its rules in this specific scenario,” and the Commission “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.”¹² Independent Telephone & Telecommunications Alliance filed in support of TDS Telecom and stated “Halo has evaded its obligation to pay applicable access charges by advancing a number of specious legal theories. Both the Commission and numerous state regulators have rejected Halo’s claims, confirming that the access charges at issue were lawfully billed.”¹³ The National Exchange Carrier Association et al. also filed in support of TDS Telecom and stated that “fundamental fairness and the public interest dictate the Commission waive Section 51.917(c) for all rate-of-return carriers harmed by Halo’s access avoidance schemes.”¹⁴

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 investments,” 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 severely compromised by strict adherence to the 2011 Base Period Revenue rules.”¹⁵ Like Wilkes, the three Oklahoma ILECs are seeking relief

¹² *Id.* at pg. 3-4 and 12.

¹³ See Comments of the Independent Telephone & Telecommunications Alliance WC Docket No. 10-90 *et al.* (filed Oct. 1, 2012) at 3.

¹⁴ See 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.* (filed Oct. 1, 2012) at 2-3.

¹⁵ 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) at iv.

from the Commission as there are no alternatives for reversing the financial damages caused by the Halo events. Wilkes agrees that “[b]ut for the actions of Halo in instituting its scam – pulling traffic from legitimate carriers that would have been charged access by Petitioners, and then filing bankruptcy – these revenues would have been included in Petitioners’ 2011 Base Period Revenues.”¹⁶ 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 be able to include the 2011 ICC payments Halo owes in their Eligible Recovery baseline revenues.”¹⁷

Guadalupe Valley Telephone Cooperative (“GVTC”) filed a petition seeking expedited treatment from the Commission. “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.”¹⁸

Big Bend Telephone Company, Brazoria Telephone Company, Eastex Telephone Cooperative, Inc., Industry Telephone Company, Livingston Telephone Company, Inc., Mid-Plains Rural Telephone Cooperative, Inc., Riviera Telephone Company, Inc., and Valley Telephone Cooperative, Inc. (“Texas ILEC Petitioners”) also filed a petition seeking expedited treatment from the Commission. “The events described...have produced a recurring penalty for the Petitioners, as they will never receive the amounts owed by Halo *and* the negative annual

¹⁶ *Id.* at 9.

¹⁷ See Comments of the United States Telecom Association WC Docket No. 10-90 *et al.* (filed Jan. 2, 2013) at 1.

¹⁸ See Petition of Guadalupe Valley Telephone Cooperative, Inc. for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket No. 10-90 *et al.* (filed March 6, 2014) at 3.

impact on the Petitioners' recovery mechanism funding puts them in a precarious position where seeking relief from the Commission is the only viable option left at this point.”¹⁹

The reduction of Base Period Revenues experienced by Wilkes because of Halo's fraud and refusal to pay invoices was not just a one-time impact. It continues to cause a financial impact to Wilkes every year the Base Period Revenue is used to help calculate support. The cumulative effects of reduced annual funding for network investment and operation solely because of Halo's dishonest actions will be felt by customers over time. Wilkes requests Commission approval of this petition, which will serve 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 because Wilkes 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

Wilkes requests the Commission to grant its requested waiver to allow Halo billed charges for FY2011 to be included in the Base Period Revenue. Wilkes has demonstrated that there is good cause to grant relief pursuant to Section 1.3 and that relief is in the public interest.

Wilkes has exhausted all other avenues available. Wilkes requests the Commission grant this

¹⁹ See Petition of Big Bend Telephone Company, Brazoria Telephone Company, Eastex Telephone Cooperative, Inc., Industry Telephone Company, Livingston Telephone Company, Inc., Mid-Plains Rural Telephone Cooperative, Inc., Riviera Telephone Company, Inc., and Valley Telephone Cooperative, Inc. for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket No. 10-90 et al. (filed March 6, 2014) at 5.

waiver to increase the Base Period Revenue in the amount of \$147,149.01 which is the amount of intrastate access and CMRS usage from FY 2011 that was billed to Halo and not paid prior to March 31, 2012 as detailed in the following Attachment. For the reasons stated above, Wilkes requests the Commission to grant this Petition.

Respectfully submitted,

/s/ Eric S. Cramer

Eric S. Cramer
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Filed April 14, 2014

Attachments

Attachment A

**Wilkes Telephone Membership Corp
FY2011 Amounts Billed to Halo Wireless and not Paid by March 31, 2012**

	February 2011 Invoice Amount **	March 2011 Invoice Amount	April 2011 Invoice Amount	May 2011 Invoice Amount	June 2011 Invoice Amount	July 2011 Invoice Amount	August 2011 Invoice Amount	September 2011 Invoice Amount	Totals
Minutes of Use	526,645	270,141	323,818	267,785	268,870	494,659	405,240	529,284	3,086,442
Interstate Traffic Termination	\$ 3,916.30	\$ 2,305.79	\$ 2,450.54	\$ 1,970.31	\$ 2,466.80	\$ 5,028.95	\$ 3,428.73	\$ 3,873.55	\$ 25,440.97
Intrastate Traffic Termination	\$ 21,897.29	\$ 12,496.26	\$ 13,410.95	\$ 10,122.03	\$ 9,986.60	\$ 19,484.19	\$ 13,971.13	\$ 20,210.50	\$ 121,578.95
Wireless Traffic Termination	\$ 4,415.10	\$ 1,869.54	\$ 2,698.70	\$ 2,432.90	\$ 2,183.78	\$ 3,534.20	\$ 3,650.18	\$ 4,785.66	\$ 25,570.06
Totals	\$ 30,228.69	\$ 16,671.59	\$ 18,560.19	\$ 14,525.24	\$ 14,637.18	\$ 28,047.34	\$ 21,050.04	\$ 28,869.71	\$ 172,589.98

** Note that the February invoice included usage from January 1 - February 28, 2011.

	Requested Relief
FY 2011 Intrastate Billed Amount =	\$ 121,578.95
FY 2011 Wireless Billed Amount =	\$ 25,570.06
FY 2011 Total =	\$ 147,149.01
Customers (approx) =	8,900
Per Customer Impact =	\$ 16.53

Declaration of Eric S. Cramer

1. My name is Eric S. Cramer and I am CEO for Wilkes Telephone Membership Corporation (“Wilkes”).
2. I certify that none of the amounts billed to and owed by Halo Wireless, Inc. that are the subject of the attached Petition for Limited Waiver were included in Wilkes’ Eligible Recovery Amount baseline filings with the Commission.
3. The calculations in the Attachment accurately reflect the proper jurisdiction of minutes of use and billing as indicated by Wilkes’ SS7 records for Halo Wireless traffic that was terminated by Wilkes 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.



Eric S. Cramer
CEO
Wilkes Telephone Membership Corporation

April 14, 2014