

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

In the Matter of	)	
	)	
Petition of Guadalupe Valley Telephone Cooperative for Limited and Expedited Waiver of the Commission’s Intercarrier Compensation Recovery Rules for Rate-of-Return Carriers	)	WC Docket Nos. 10-90, 07-135 CC Docket No. 01-92
	)	
Petition of Texas LECs for Limited and Expedited Waiver of the Commission’s Intercarrier Compensation Revenue Recovery Rules for Rate-of-Return Carriers	)	WC Docket Nos. 10-90, 07-135 CC Docket No. 01-92
	)	

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

Pursuant to the Wireline Competition Bureau’s Public Notices,<sup>1</sup> the United States Telecom Association (USTelecom)<sup>2</sup> respectfully submits these comments in support of the Petitions for Limited and Expedited Waiver (*Petitions*) filed March 6, 2014, by Guadalupe Valley Telephone Cooperative (“GVTC”) and by 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

---

<sup>1</sup> See Public Notices, “Wireline Competition Bureau Seeks Comment on Guadalupe Valley Telephone Cooperative Petition for Limited and Expedited Waiver of the Commission’s Intercarrier Compensation Revenue Recovery Rules for Rate-of-Return Carriers (DA 14-917), (rel. June 26, 2014); and Wireline Competition Bureau Seeks Comments on Texas LECs Petition for Limited and Expedited Waiver of the Commission’s Intercarrier Compensation Revenue Recovery Rules for Rate-of-Return Carriers (DA 14-913), (rel. June 26, 2014), (WC Docket Nos. 10-90, 07-137 and CC Docket No. 01-92).

<sup>2</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

Telephone Company, Inc. and Valley Telephone Cooperative, Inc. (“Texas LECs”) (GVTC and the Texas LECs will be jointly referred to as “Petitioners”). The Petitioners seek limited and expedited waiver of the requirements set forth in Section 51.917(c) of the Commission’s rules to “include amounts owed by Halo Wireless Inc. (“Halo”) in Fiscal Year 2011 in the Petitioners’ Base Period.”<sup>3</sup> Petitioners seek this inclusion to be effective as of July 1, 2102.<sup>4</sup> Petitioners provide the amount that the Public Utility Commission of Texas determined was owed to each.<sup>5</sup>

USTelecom believes that the Petitioners and all other similarly situated carriers should be able to include the 2011 intercarrier compensation 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 abundantly clear that, due to its Chapter 11 bankruptcy filing<sup>6</sup> and subsequent decision to liquidate,<sup>7</sup> Halo will never pay the intercarrier compensation charges it owes to the Petitioners and other similarly situated carriers. For years, carriers and state regulators 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,

---

<sup>3</sup> See GVTC Petition at 2 and Texas LECs Petition at 2.

<sup>4</sup> *Id.*

<sup>5</sup> See GVTC Petition at 8 and Texas LECs Petition at 11 and 12.

<sup>6</sup> 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.”).

<sup>7</sup> *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).

and now makes it impossible to collect any payments at all. 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.

### **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,<sup>8</sup> 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 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.<sup>9</sup> 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

---

<sup>8</sup> *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).

<sup>9</sup> 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”).

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.”<sup>10</sup>

The Petitioners state that they began receiving traffic from Halo Wireless to terminate in August of 2010 and began billing Halo for terminating intrastate access traffic pursuant to the rates, terms and conditions set forth in the applicable approved intrastate access tariffs.<sup>11</sup> Halo subsequently refused to pay all intercarrier compensation charges to GVTC, the Texas LECs and numerous other ILECs, contending that it was a Commercial Mobile Radio Service (CMRS) provider and all of its traffic delivered to the Petitioners and others was intraMTA CMRS and that no compensation was due for transport and termination.<sup>12</sup> Of greatest significance to the question presented by the *Petitions*, Halo’s argument that it was a CMRS provider was rejected by the Commission in the USF/ICC Transformation Order which stated “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 providers;” and “we agree 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.”<sup>13</sup>

---

<sup>10</sup> 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*), ¶ 1006.

<sup>11</sup> See GVTC Petition at 3 and Texas LECs Petition at 5.

<sup>12</sup> See GVTC Petition at 3 and Texas LECs Petition at 5 and 6.

<sup>13</sup> 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*”).

**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 Petitions will avoid penalizing rural Texans, 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.<sup>14</sup> Such relief promotes the policy of the rule by enabling an accurate 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.<sup>15</sup>

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

---

<sup>14</sup> 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*, ¶ 898, n. 1745.

<sup>15</sup> 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).

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.<sup>16</sup> 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 *Petitions* for an expedited and 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

---

<sup>16</sup> See *USF/ICC Transformation Order*, ¶¶ 17 (enumerating principles guiding reforms), and 69 (deployment of broadband to rural areas is one goal of reforms).

the rule, as well 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,

UNITED STATES TELECOM ASSOCIATION



By: \_\_\_\_\_

David Cohen  
Jonathan Banks

Its Attorneys

607 14<sup>th</sup> Street, NW, Suite 400  
Washington, D.C. 20005  
202-326-7300

July 28, 2014