

**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 Inter-carrier 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

**COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION**

**EMERGENCY REQUEST FOR EXPEDITED TREATMENT**

**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)**

**I. INTRODUCTION AND BACKGROUND**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in support of Big Bend Telephone Company’s (“Big Bend”), Brazoria Telephone Company’s

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<sup>1</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services, as well.

(“Brazoria”), Eastex Telephone Cooperative, Inc.’s (“Eastex”), Industry Telephone Company’s (“Industry”), Livingston Telephone Company, Inc.’s (“Livingston”), Mid-Plains Rural Telephone Cooperative, Inc.’s (“Mid-Plains”), Riviera Telephone Company, Inc.’s (“Riviera”), and Valley Telephone Cooperative, Inc.’s (“Valley”) (jointly, “Petitioners” or “Texas ILEC Petitioners”) emergency request<sup>2</sup> for expedited treatment for limited waiver of Section 51.917(c)<sup>3</sup> of the rules of the Federal Communications Commission (“Commission” or “FCC”).

For the reasons discussed below, NTCA requests that the Commission grant the Texas ILEC Petitioners’ request for a limited waiver of 47 C.F.R. Section 51.917(c). The Petitioners have shown good cause exists for granting the waiver, and that granting the waiver would be in the public interest. NTCA therefore joins with the Petitioners in requesting that the Commission grant the requested waiver as expeditiously as possible.

## **II. SPECIAL CIRCUMSTANCES AND THE PUBLIC INTEREST SUPPORT IMMEDIATE GRANT OF THE REQUESTED EMERGENCY WAIVER**

Each of the Petitioners is a rural incumbent local exchange carrier (“RLEC”) operating in rural areas of Texas, and each is an NTCA member company. Each has a long history of providing high-quality voice and broadband services to its customers. Like many RLECs, the Providers’ service areas are remote and costly to serve—“from low-income areas to vast stretches of the U.S-Mexico border to regions with extremely rugged terrain.”<sup>4</sup> Consequently,

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<sup>2</sup> *Connect America Fund et. al.*, WC Docket No. 10-90 *et al.*, “Emergency Request for Expedited Treatment: 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),” filed March 14, 2014 (“Texas ILEC Petition.”)

<sup>3</sup> 47 C.F.R. § 51.917(c).

<sup>4</sup> Texas ILEC Petition, p. 4.

the Petitioners have long relied upon predictable and sufficient Universal Service Fund (“USF”) support and intercarrier compensation (“ICC”) revenues in order to provide reasonably priced service throughout their service areas. Any threat to the sufficiency of Petitioners’ USF and ICC funding will in turn endanger their ability to continue to provide uninterrupted, high-quality service to their customers.

As the Texas ILEC Petitioners detailed in their petition, they began terminating traffic from Halo Wireless, Inc. (“Halo”) in August of 2010, and began billing Halo shortly thereafter. However, Halo refused to pay all intercarrier compensation charges to every Petitioner. The Petitioners subsequently pursued complaint cases under state law and arbitration cases under federal law against Halo. However, Halo filed for bankruptcy on August 8, 2011, temporarily staying all regulatory proceedings. In September 2012, Halo was forced from Chapter 11 to Chapter 7 bankruptcy, at which time the Texas Commission dismissed that case against Halo, which had ceased operations and liquidated all of its assets.

The Texas Commission has determined that Halo owed the Petitioners a total of \$460,861.91, broken down as follows:

- Big Bend Telephone Company: \$27,696.61
- Brazoria Telephone Company: \$52,432.67
- Eastex Telephone Company, Inc.: \$221,621.47
- Industry Telephone Company: \$6,346.79
- Livingston Telephone Company Inc.: \$56,351.26
- Mid-Plains Rural Telephone Cooperative, Inc.: \$19,111.71
- Riviera Telephone Company, Inc.: \$5,601.29
- Valley Telephone Cooperative, Inc.: \$71,703.11

The FCC requires that all revenues included in calculating Base Period revenues for Fiscal Year 2011 had to have been collected by March 31, 2012. The Texas ILEC Petitioners request that the Commission allow each company to include in the respective company's Base

Period Revenue the above amount owed to it by Halo. The Petitioners maintain that not including these revenues in the Carrier Base Period Revenue would have “an adverse impact on the Petitioners’ recovery mechanism funding,” and would “limit[] their ability to invest in and improve their networks.”<sup>5</sup>

### **III. THE TEXAS ILEC PETITIONERS HAVE SHOWN THAT GOOD CAUSE EXISTS FOR GRANTING THE WAIVER, AND THAT GRANTING THE WAIVER WOULD BE IN THE PUBLIC INTEREST**

Section 1.3 of the Commission’s rules states that “rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”<sup>6</sup> The “good cause shown” standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest. Generally, waiver of the Commission's rules is granted when both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest. As demonstrated more fully below, both prongs of the Commission’s waiver standard are met in this instance.

As the Commission stated in the USF/ICC Transformation Order, “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 jurisdiction.”<sup>7</sup> The Public Utility Commission of Texas determined that

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<sup>5</sup> Texas ILEC Petition, p. 2.

<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> *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. November 18, 2011) (“*USF/ICC Transformation Order*”), fn 1745.

revenues in the amount of \$460,861.91 were rightfully owed by Halo to the Petitioners in FY2011 and by rights should have been paid to the Petitioners at that time.

As the Texas ILEC Petitioners detailed in their petition, the inability to collect these sums owed to them was through no fault of their own, but rather due to the actions of Halo, with whom the Petitioners had conducted business in good faith. Compounding this injustice will be the fact that, should the Commission not grant the requested waiver, each of the Petitioners will have been harmed twice—once, when Halo did not pay the money owed; and again, when the lost revenues negatively affect the Company’s Base Period revenue. It is unfortunate that the Petitioners must suffer once for circumstances beyond their control; they should not be made to absorb a second penalty.

The Base Period Revenue is used in the calculation of the Company’s Eligible Recovery, and “is part of the transitional recovery mechanism established by the Commission expressly to mitigate the impact of the *USF/ICC Transformation Order* on carrier revenues and investments.”<sup>8</sup> The Petitioners further assert that “[g]rant of this limited waiver would allow the initial calculation of Eligible Recovery to accurately represent the Petitioners’ FY 2011 Base Period Revenues,”<sup>9</sup> and NTCA concurs.

Granting the Texas ILEC Petitioners’ request is clearly in the public interest. If not granted the waiver, the Petitioners will each take a significant financial hit that will adversely affect their ability to continue to invest in their networks, which will ultimately negatively affect each Petitioner’s customers. The Petitioners and their customers are innocent victims; they

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<sup>8</sup> Texas ILEC Petition, p.11.

<sup>9</sup> *Ibid.*

should not be held culpable for the ill-advised actions of a third party that the Commission has explicitly recognized had no justification for its business practices and related policy positions.

#### **IV. CONCLUSION**

For the foregoing reasons, NTCA urges the Commission to grant this emergency request for expedited treatment without delay, and allow each of the Texas ILEC Petitioner's to include in their Base Period Revenue the sum detailed herein that the Public Utility Commission of Texas determined was owed to them by Halo in FY 2011.

Respectfully Submitted,



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