

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

I. INTRODUCTION AND BACKGROUND

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in support of NTCA member company Guadalupe Valley Telephone Cooperative’s (“GVTC’s” or

¹ 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.

“Company’s”) emergency request² for expedited treatment for limited waiver of Section 51.917(c)³ of the rules of the Federal Communications Commission (“Commission” or “FCC”).

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

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

GVTC is a rural incumbent local exchange carrier (“RLEC”) operating in rural parts of Texas Hill Country and north of San Antonio. The company serves approximately 37,000 access lines in its service area, making it the largest telephone cooperative in the state of Texas. GVTC has a long history of providing high-quality service to its customers. The Company has relied upon predictable and sufficient Universal Service Fund (“USF”) support and intercarrier compensation (“ICC”) revenues to provide reasonably priced service throughout its rural service area. Any threat to the sufficiency of GVTC’s USF and ICC funding will in turn endanger the Company’s ability to continue to provide uninterrupted, high-quality service to its customers.

As GVTC detailed in its petition, the Company 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 GVTC. GVTC subsequently

² *Connect America Fund et. al.*, WC Docket No. 10-90 *et al.*, “Emergency Request for Expedited Treatment: Petition of Guadalupe Valley Telephone Cooperative for Limited Waiver of 47 C.F.R. § 51.917(c),” filed March 6, 2014 (“GVTC Petition.”)

³ 47 C.F.R. § 51.917(c).

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 Public Utility Commission dismissed that case against Halo, which had ceased operations and liquidated all of its assets.

The Texas Commission has determined that Halo owed GVTC \$278,317.62. 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. In its Petition, GVTC requests that the Commission allows the company to include in the Company's Base Period Revenue the \$278,317.62 owed to it by Halo as determined by the Texas Commission. GVTC maintains that not including these revenues in the Carrier Base Period Revenue would have “a significant adverse impact on GVTC’s recovery mechanism funding,” and would “limit[] the company’s ability to invest in and improve its network.”⁴

III. GVTC HAS 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.”⁵ 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

⁴ GVTC Petition, p. 2.

⁵ 47 C.F.R. § 1.3.

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."⁶ The Public Utility Commission of Texas determined that revenues in the amount of \$278,317.62 were rightfully owed by Halo to GVTC in FY2011 and by rights should have been paid to GVTC at that time.

As GVTC detailed in its petition, the inability to collect the more than a quarter of a million dollars in revenues owed was through no fault of its own, but rather due to the actions of Halo, with whom GVTC had conducted business in good faith. Compounding this injustice will be the fact that, should the Commission not grant the requested waiver, GVTC 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 GVTC must suffer once for circumstances beyond their control; the Company 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

⁶ *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.

investments.”⁷ GVTC further asserts that “grant of this limited waiver would allow the initial calculation of Eligible Recovery to accurately represent the Company’s FY 2011 Base Period Revenue,”⁸ and NTCA concurs.

Granting GVTC’s request is clearly in the public interest. If not granted the waiver, GVTC will take a significant financial hit that will adversely affect its ability to continue to invest in its network, which will ultimately negatively affect GVTC’s customers. GVTC and its customers are innocent victims; the Company 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.

⁷ GVTC Petition, p.8.

⁸ *Ibid.*

IV. CONCLUSION

For the foregoing reasons, NTCA urges the Commission to grant this emergency request for expedited treatment without delay, and allow GVTC to include in the Company's Base Period Revenue the \$278,317.62 that the Public Utility Commission of Texas determined was owed by Halo in FY 2011.

Respectfully Submitted,



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