

July 28, 2014

Via ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, WC Docket No. 10-90; GN
Docket No. 09-51, WC Docket No. 07-135; WC Docket No. 05-
337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket
No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

Earlier today, I spoke by telephone with Daniel Alvarez, Legal Advisor to Chairman Wheeler, in connection with the Petition for Limited Waiver of 47 C.F.R. § 51.917(c) (“Petition”) filed by TDS Telecommunications Corp. (“TDS Telecom”) in the above-referenced proceedings.¹ The substance of my conversation with Mr. Alvarez is set forth below.

As should be abundantly clear from the many filings TDS Telecom has submitted to date in the above-referenced proceedings, TDS Telecom’s Petition seeks a waiver of the standard set forth in footnote 1745 of the *Transformation Order* due to legal impossibility. More specifically, the bankruptcy filing of Halo Wireless Inc. (“Halo”) – and the automatic stay imposed by the bankruptcy court as a result of that filing – has made it legally impossible for TDS Telecom to secure, as footnote 1745 requires, “a decision of a court or regulatory agency of competent jurisdiction” to order Halo to pay amounts owed to TDS Telecom for inclusion in TDS Telecom’s eligible recovery baseline.² The fact that Halo’s bankruptcy proceeding was converted from a restructuring under Chapter 11 to a liquidation under Chapter 7 of the Bankruptcy Code, coupled with the fact that TDS Telecom possesses only an unsecured claim

¹ TDS Telecommunications Corp., Petition for Limited Waiver of 47 C.F.R. § 51.917(c), filed August 10, 2012.

² *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, et al., *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, ¶ 898, n.1745 (rel. Nov. 18, 2011) (“*Transformation Order*”), *aff’d sub nom. In re FCC 11-161*, --- F.3d ---, 2014 WL 2142106 (10th Cir. May 23, 2014).

Ms. Marlene H. Dortch, Secretary

July 28, 2014

Page 2

against Halo, explains why TDS Telecom does not expect that it *ever* will be able to secure an order of payment, whether from the bankruptcy court or from any other court or regulatory agency of competent jurisdiction. It also explains why TDS Telecom believes that it *always* will be prevented by operation of law from securing the sort of relief contemplated by footnote 1745 of the *Transformation Order* absent the grant of its Petition.

It was precisely for this reason that TDS Telecom filed its Petition with the Commission in the first place. In effect, TDS Telecom's Petition seeks "a waiver from the waiver standard" set forth in footnote 1745 due to the legal impossibility of satisfying that standard. Good cause exists for granting TDS Telecom's Petition for this waiver, not only because the Commission repeatedly has recognized that Halo's access avoidance practices were unlawful,³ but also because TDS Telecom took many unique and extraordinary steps to recover the amounts owed by Halo in a manner that was consistent with the purpose, spirit and intent of footnote 1745.

For instance, after sending demand letters to Halo when the company refused to pay, TDS Telecom timely petitioned state regulatory commissions in multiple states to recover payment, and then participated actively in Halo's bankruptcy proceeding in an effort to secure the amounts it was owed. Specifically, TDS filed petitions for itself before three state regulatory commissions (Georgia, Tennessee and Wisconsin), and participated in other state regulatory proceedings either as an intervenor or through its trade association. In Georgia, TDS Telecom filed its complaint with the Georgia Public Service Commission on June 14, 2011, a month after being told by Halo on May 24, 2011, that it would not pay TDS Telecom what it owed. In Tennessee, TDS Telecom filed its complaint with the Tennessee Regulatory Authority on July 7, 2011, less than a month after being told by Halo on June 15, 2011, that it would not pay. And in Wisconsin, TDS Telecom filed its complaint before the Wisconsin Public Service Commission only a short time later, on August 8, 2011, when it was clear that Halo was refusing to pay. The timing of these filings demonstrate that TDS Telecom acted quickly and took precisely the steps contemplated by footnote 1745 of the *Transformation Order* when Halo refused to pay.

When it became clear to TDS Telecom that it would not be able to recover the amounts owed by Halo through the state regulatory process due to the automatic stay that resulted from Halo's bankruptcy filing, TDS Telecom took other steps to secure payment from Halo, such as by filing a claim for payment with the bankruptcy court. But that, too, failed to provide the relief TDS Telecom sought. Because Halo initially sought to reorganize under Chapter 11 of the Bankruptcy Code, TDS Telecom at first believed that it could be possible to recover the payment it was owed, or at least partial payment. But eventually, after multiple state commissions determined that Halo traffic was subject to access charges (these commissions

³ See, e.g., *Transformation Order* at ¶¶ 979,1005-1006.

Ms. Marlene H. Dortch, Secretary

July 28, 2014

Page 3

could not order payment due to the automatic stay, but they nevertheless could make such regulatory determinations), Halo converted its bankruptcy case from a Chapter 11 reorganization to a Chapter 7 liquidation, presumably because it would not be able to fulfill its intercarrier compensation obligations due to these state commission decisions. On July 13, 2012, Halo's bankruptcy filing was converted from a reorganization to a liquidation; and because TDS Telecom's claim (like all claims for intercarrier compensation) was unsecured,⁴ it became clear to TDS Telecom only at that point that it would not recover any amounts owed by Halo through the bankruptcy court process.

When it became clear to TDS Telecom on July 13, 2012 that, despite its best efforts, TDS Telecom would *never* be able to secure "a decision of a court or regulatory agency of competent jurisdiction" to order Halo to make payment so TDS Telecom could include the amounts owed in its eligible recovery baseline, TDS Telecom did not waste any time before seeking relief from the Commission. Specifically, TDS Telecom filed its Petition less than 30 days later on August 10, 2012.

As a result of these actions, TDS Telecom believes that its Petition could – and should – be granted in a manner that is wholly consistent with and respectful of the nature and purpose of the waiver standard set forth in footnote 1745 of the *Transformation Order*. That footnote – which permits a carrier to seek a waiver of the March 31, 2012, deadline for defining the carrier's eligible recovery baseline when funds are recovered after that date "as the result of the decision of a court or regulatory agency of competent jurisdiction" – was intended not only to ensure the veracity of late-collected amounts, but also to impose a degree of discipline on carriers who believed they were entitled to the inclusion of certain funds in their eligible recovery baselines but simply were not able to collect them by the March 12, 2012, deadline. In other words, the standard set forth in footnote 1745 required carriers to do more than simply assert that they were owed payment; it required first to take meaningful steps to recover those payments, first by taking the time to prepare and file a petition or complaint in a court or state commission, second by developing a record proving that the payment indeed was owed, third by securing an order requiring payment, and fourth by seeking a waiver from the Commission of the March 12, 2012, deadline.

TDS Telecom took these steps in multiple jurisdictions across multiple fora, but was prevented from effectuating one of them (the third, securing an order requiring payment) due solely to legal impossibility. The Commission could not possibly have foreseen these circumstances, which is why a waiver of the standard set forth in footnote 1745 is so appropriate

⁴ Under bankruptcy law, secured claims take priority over unsecured claims, which means that unsecured claims seldom recover more than pennies on the dollar in bankruptcy and frequently recover nothing because the estate of the debtor typically is exhausted by the secured claims alone.

Ms. Marlene H. Dortch, Secretary

July 28, 2014

Page 4

here. Indeed, section 1.4 of the Commission's rules authorizes the Commission to grant a waiver for "good cause shown." It is beyond question that legal impossibility should satisfy this standard.

Importantly, the Commission can grant TDS Telecom's Petition in a manner wholly consistent with the purpose of footnote 1745. Indeed, in granting TDS Telecom's Petition, the Commission could note that TDS Telecom took timely action to actively pursue a decision of a court or regulatory agency of competent jurisdiction by filing complaints as early as June, July and August of 2012, within mere weeks of being told by Halo that it would not pay. The Commission also could note that the state regulatory commissions that evaluated TDS Telecom's claims concluded without exception that the Halo traffic was subject to payment, and that they were prevented from ordering such payment due of the automatic stay that resulted from Halo's bankruptcy filing. Furthermore, the Commission could note that TDS Telecom sought relief in more than one state, and did so by expending resources to file its own complaint not only in one jurisdiction but in three jurisdictions.⁵ Indeed, if the Commission desires to adhere to a further limiting principle in granting the waiver sought by TDS Telecom, it could determine that good cause for that waiver exists only where a carrier on its own actively pursued an order requiring payment from a court or regulatory agency of competent jurisdiction, or where compensation was owed in multiple states the carrier took such action in more than one state. The Commission also could recognize that TDS Telecom filed its Petition seeking relief from the Commission on a timely basis, within less than 30 days after it became clear to the company that Halo had converted its bankruptcy from a reorganization to a liquidation and thus that TDS Telecom would *never* be able to recover the amounts it was owed or satisfy the waiver standard in footnote 1745.

Many of the rules and policies developed in the *Transformation Order* are complex. The nature of the relief being sought by TDS Telecom is not. Indeed, under the facts and circumstances presented herein and in TDS Telecom's earlier submissions, the Commission can determine that TDS Telecom unquestionably and uniquely has shown "good cause" for a grant of its Petition. Moreover, in granting TDS Telecom's Petition, the Commission can be assured that such action is wholly consistent with the purpose and spirit of the standard set forth in footnote 1745 for which the waiver is being sought.

⁵ TDS Telecom prioritized Georgia, Tennessee and Wisconsin because the majority of the intercarrier compensation owed by Halo was for service rendered by TDS Telecom in those three states.

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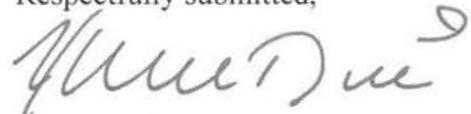
Ms. Marlene H. Dortch, Secretary

July 28, 2014

Page 5

Pursuant to the Commission's rules, I am filing a copy of this letter in the above-referenced docket. Please contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Yaron Dori', with a stylized flourish at the end.

Yaron Dori

cc: Daniel Alvarez