

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of TDS Communications)	WC Docket Nos. 10-90, 07-135, 03-109
Corporation for Limited Waiver of)	GN Docket No. 09-51
47 C.F.R. § 51.917(c))	CC Docket Nos. 01-92, 96-45
)	WT Docket No. 10-208

**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**

By Public Notice dated August 30, 2012,¹ the Commission has requested comment on a petition filed by TDS Telecommunications Corporation (TDS)² seeking limited waiver of the Commission's rules set forth in section 51.917(c) so that it may include in its Carrier Base Period Intercarrier Compensation (ICC) Revenue the amounts owed to it by Halo Wireless in Fiscal Year 2011. Those revenues, which it would appear TDS will never collect due to Halo Wireless' Chapter 7 bankruptcy proceeding, would then be eligible for recovery pursuant to the FCC's Eligible Recovery mechanism.

¹ *Wireline Competition Bureau Seeks Comment on TDS Telecommunications Corporation petition for Limited Waiver of the Commission's Rules*, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Public Notice, DA 12-1416 (rel. Aug. 30, 2012)(*Public Notice*).

² TDS Petition for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket No. 10-90, *et al.* (filed Aug. 9, 2012) (*TDS Petition*).

The Associations listed above³ agree that TDS and all other similarly-situated carriers should be able to include the 2011 ICC 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 filing⁴ and subsequent decision to liquidate,⁵ Halo will never pay the ICC charges it owes to carriers like TDS. For years, the Associations, carriers and state regulators have 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, and now makes it impossible to collect any payments at all. As described in TDS' petition, fundamental fairness and the public interest dictate the Commission

³ The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return ("RoR") regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 420 small incumbent local exchange carriers ("ILECs") serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 et seq.; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241(1983). USTelecom is a national trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks. ("Associations").

⁴ 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, South Carolina PSC (issued July 17, 2012) ("[Court did] not quantify any precise amount due, hold[ing] that is an issue for Halo's bankruptcy proceeding.").

⁵ *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).

waive 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 price cap carriers' may include in their 2011 Price Cap Carrier Base Period Revenue unpaid amounts billed to Halo Wireless, Inc. for intrastate usage during FY 2011.

I. BACKGROUND

For years, Halo Wireless has forwarded traffic for termination on ILEC networks without placing access service orders or entering into interconnections agreements with terminating carriers.⁶ When ILECs became aware of the source of this traffic, they responded by billing Halo appropriate ICC charges. Halo initially refused to pay such charges, falsely stating it was a Commercial Mobile Radio Service (CMRS) provider whose traffic was all originated within the same Metropolitan Trading Area (MTA) as where it was terminated.⁷ 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.⁸ Halo asserted it was offering "Common Carrier wireless exchange services to . . . enterprise customers' in which the customer 'connects wirelessly to Halo base stations in each MTA,'" and

⁶ *Joint Petition of Verizon Pennsylvania, Inc. and Halo Wireless Services, Inc. for Approval of an Interconnection Agreement and Amendment No. 1 to the Interconnection Under Section 252(a) of the Telecommunications Act of 1996*, Docket No. A-2011-225 1 147; *Joint Petition of Verizon North LLC and Halo Wireless Services, Inc. for Approval of a Wireless Interconnection Agreement and Amendment No. 1 Under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2011- 2250700, Comments, Protests and Objections of the Pennsylvania Telephone Association (filed Aug. 2, 2011) (*PTA Objections*).

⁷ See, e.g., *Complaint of TDS Telecom on Behalf of its Subsidiaries Blue Ridge Telephone Company, Camden Telephone & Telegraph Company, Inc. et al. and Other Affiliates for Failure to Pay Terminating Intrastate Access Charges for Traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic*, Docket No. 34219, Complaint, Georgia PSC (filed June 14, 2011).

⁸ See, e.g., *BPS Telephone, et al. v. Halo Wireless*, Docket No. 2011-0404, Complaint, ¶ 43 Missouri PSC (filed June 22, 2011) ("appears as much as 70% of Halo's traffic is intrastate interexchange wireline originated traffic").

“[t]he origination point for Halo traffic is the base station to which Halo’s customers connect wirelessly,”⁹ which in its view exempted the calls from access charges.¹⁰ The Commission, however, firmly rejected Halo’s call “re-origination” theory,¹¹ and state regulatory authorities have ruled Halo is responsible for applicable access charges.¹²

Halo appears to have made few, if any, payments to carriers for any ICC amounts billed. Instead, Halo filed for bankruptcy in August 2011 after attempting to defend countless complaints that it had not paid applicable access charges or other applicable ICC amounts before state commissions, state and federal courts.¹³ In July 2012, Halo filed an Emergency Motion with the Bankruptcy Court in Texas to convert its ongoing day-to-day operations from Chapter 11 to Chapter 7 liquidation proceedings.¹⁴ In its motion, Halo states, “it now appears unfeasible to propose a plan of reorganization that would allow it to operate far enough into the future to establish its non-liability, or attempt to show its liability is within a range it could amass for the

⁹ 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) ¶ 1005 (*USF/ICC Transformation Order*) (citing Letter from W. Scott McCollough, Counsel for Halo Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Attach. at 9 (filed Aug. 12, 2011)).

¹⁰ See, e.g., *Halo Wireless, Inc. v. Tennessee Regulatory Authority, et al.*, Complaint, Case No. 3:12-cv-00302 (filed Nov. 1, 2011).

¹¹ *USF/ICC Transformation Order* ¶¶ 1005-1007.

¹² See, e.g., *BellSouth Telecommunications d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119, Order, at 19, Tennessee Regulatory Authority (filed Jan. 26, 2012).

¹³ *TDS Petition* at 8.

¹⁴ *Halo Wireless, Inc., Debtor*, Case No. 11-42464, Emergency Motion for Section 105 Status Conference in Order to Establish Procedures for Conversion to Chapter 7 (filed July 13, 2012) (*TDS Chapter 7 Motion*).

purposes of a plan.”¹⁵ As a result, carriers are unable to order or enforce payment due to Halo’s bankruptcy filing and subsequent decision to liquidate.

II. THE COMMISSION SHOULD WAIVE SECTION 51.917(c) AND 51.915(c) AND ALLOW TDS TELECOM AND ALL SIMILARLY-SITUATED CARRIERS TO INCLUDE AMOUNTS OWED BY HALO IN FISCAL YEAR 2011 IN THEIR CARRIER BASE PERIOD REVENUE.

The Associations have previously discussed with the Commission¹⁶ how Halo has attempted to create regulatory loopholes for itself and has utilized stall tactics in payment and negotiation while continuing to use rate of return and price cap carriers’ networks free of charge.¹⁷ Halo’s actions have now put ILECs in an impossible situation. The *USF/ICC Transformation Order* and the Commission’s rules¹⁸ require a carrier’s eligible recovery baseline to include revenues billed for Fiscal Year 2011 that were actually received by March 31, 2012. Although the Commission’s rules contemplate waivers of this deadline for revenues received after March 31, 2012, resulting from the decision of a court or regulatory agency of competent jurisdiction,¹⁹ Halo’s decision to liquidate renders such relief unavailable. Despite numerous

¹⁵ *Id.* ¶ 11.

¹⁶ Letter from Gregory W. Whiteaker, representing TDS Telecom, NECA, OPASTCO, NTCA, and MoSTCG, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (filed Sept. 23, 2011) (*Rural Association Letter*); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed July 18, 2011) (*NTCA Letter*); Letter from Jerry Weikle, representing 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 Oct. 14, 2011).

¹⁷ *Rural Association Letter* at 9; *NTCA Letter*, Attach., at 3. The quantifiable effects on a number of small carriers of Halo’s nonpayment were demonstrated in the *NTCA Letter*, Attach., at 8-9.

¹⁸ 47 C.F.R. § 51.917(c).

¹⁹ *USF/ICC Transformation Order* ¶ 898, n. 1745.

court decisions and regulatory authority rulings in their favor,²⁰ and despite requests to the FCC for assistance,²¹ it is clear carriers will not be able to recover access charges and reciprocal compensation fees owed to them by Halo. These carriers must therefore rely on the Commission to recognize the egregious nature of Halo's behavior, consistent with its prior findings in the *USF/ICC Transformation Order*, and to allow carriers to include amounts owed by Halo in their Base Period ICC Revenues.

The public interest warrants such relief. ILECs have been providing service to Halo over several years despite extensive protests and presentation of evidence regarding these very concerns to the Commission. Failure to permit inclusion of amounts billed to Halo during this period would be patently inequitable given the persistent efforts of carriers to raise this issue to state and federal regulators for several years. Furthermore, it will have significant negative impacts on support in future years, thereby hindering necessary network investments and threatening achievement of, the Commission's goals for national broadband deployment.²² For these reasons, the Commission should grant the waiver relief requested by TDS and extend such relief to all similarly-situated carriers.

²⁰ See, e.g., *TDS Petition* at 7 (identifying the Tennessee Regulatory Authority, Public Service Commission of Wisconsin, and Georgia Public Service Commission as having ruled in TDS Telecom's favor.).

²¹ Letter from Norman J. Kennard, representing the Missouri Small Telephone Company Group, Texas Statewide Telephone Cooperative, Texas Telephone Association and TDS Telecom, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92, 96-45 (filed Dec. 1, 2011); Letter from Jerry Weikle, representing 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).

²² See, e.g., *Connecting America: The National Broadband Plan*, FCC (rel. Mar. 16, 2010) at 10 ("Every American should have affordable access to robust broadband service, and the means and skills to subscribe if they so choose.").

III. CONCLUSION.

The Associations urge the Commission to grant TDS Telecom's *Petition* for a limited waiver of section 51.917(c) and extend this relief, through limited waiver of section 51.917(c) and 51.915(c), to all similarly-situated carriers. Rate-of-return and price cap carriers should not suffer revenue losses due to Halo's regulatory gamesmanship, nor should unforeseen circumstances due to Halo's bankruptcy and subsequent liquidation proceeding prevent these carriers from including these amounts in their Base Period revenues. Grant of the requested waiver, and extension of that waiver to other similarly situated carriers, would be consistent with the Commission's express commitment to providing certainty, stability, and predictable support as part of the overall framework of the *USF/ICC Transformation Order* and would help carriers to meet the Commission's goals for national broadband availability.

Respectfully submitted,

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October 1, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 1st day of October, 2012, by electronic filing and e-mail to the persons listed below.

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