

Docket No. TMC-8, Sub 1

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Wilkes Telephone Membership Corporation (“Wilkes”) hereby submits this complaint and petition against Halo Wireless, Inc. (“Halo”) over nonpayment of invoiced usage charges. Wilkes requests a decision from the North Carolina Rural Electrification Authority agreeing that Halo Wireless, Inc. (“Halo”) is liable to Wilkes for switched access and wireless traffic it terminated to Wilkes’ network from December 2010 to August 2012.

Wilkes is a community based Telephone Membership Corporation (“TMC”) headquartered in Wilkesboro, North Carolina. Wilkes operates in some mountainous rural areas of western North Carolina. Wilkes has a long history of technical innovation and a strong bond with its local communities having served since 1951. Wilkes provides telephone service to approximately 8,900 access lines in its service area.

Halo operated an access arbitrage scheme and refused to pay for legitimate interstate access, intrastate access, and Commercial Mobile Radio Service ("CMRS") traffic. This prevented Wilkes from being able to include the amounts billed to Halo in its federal Base Period Revenue for fiscal year 2011 as discussed in more detail below. The refusal of Halo to pay caused a reduction in Wilkes' cost recovery mechanism funding which continues today. It is because of this that Wilkes is filing this complaint and petition seeking affirmation of Halo's liability for payment. The events described below have produced a double penalty for Wilkes, because we will never receive the amounts owed by Halo and that has led to a negative recurring impact to our recovery mechanism funding that continues to cause financial harm.

Wilkes initially began terminating Halo's traffic in December 2010 and quickly saw the traffic volume grow. Wilkes accessed its SS7 calling records and analyzed the traffic with Halo's operating company number of 429F to determine the proper jurisdiction of each call. In other words, Wilkes was able to see what volume of traffic transmitted by Halo was originated from CMRS carriers and what was originated from landline carriers and was then able to determine what landline calls were intrastate and what calls were interstate. Wilkes billed Halo based on whether it was CMRS or landline and the jurisdiction of landline calls. Wilkes used the same rates it used to bill for other wireless, intrastate access, and interstate access calls. Wilkes ended up billing Halo for traffic it sent during the period of January 2011 through August 2012. The total amount billed for 21 months of traffic sent by Halo totaled almost \$476,000. Halo did not pay any invoices and in fact fraudulently disputed charges more than once. Had this traffic been sent to Wilkes by almost any other carrier then the amounts billed hopefully would have been paid.

Halo fraudulently stated that it was a CMRS provider and that it only delivered intraMTA CMRS traffic and that no compensation was due for transport and termination of its traffic. The

FCC and multiple state commissions have seen numerous complaints and documentation about this.

Wilkes took an active role in learning about Halo and seeking payment and pursuing other forms of regulatory action. Wilkes participated with a group of Eastern Rural Telecom Association member companies in a teleconference call with FCC Wireline and Wireless Bureau staff on July 8, 2011. The purpose of the call was to discuss “phantom traffic and traffic laundering experienced by rural LECs as a result of Halo Wireless.”¹ During the call there was discussion about the “results of a one day study of Halo traffic which showed that the traffic was originated from customers of 176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies, none of which was Halo Wireless.”²

In the *USF/ICC Transformation Order*, the FCC rejected Halo’s claim that its service took access traffic and made it wireless by stating “one wireless service provider claims that calls that it receives from other carriers, routes through its own base stations, and passes on to third-party carriers for termination have “originated” at its own base stations for purposes of applying the intraMTA rule. As explained below, we disagree.”³

Wilkes participated in a Halo related proceeding, Docket No. P-55, Sub 1841, before the North Carolina Utilities Commission (“NCUC”) that was started when AT&T North Carolina filed a complaint on July 25, 2011 against Halo for violating terms of a wireless Interconnection Agreement by sending landline traffic instead of wireless and by “consistently altering the Charge Party Number.”⁴ Halo filed for Chapter 11 bankruptcy on August 8, 2011 and then

¹ Letter from 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).

² Id.

³ 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*”), ¶ 979.

⁴ See Complaint and Petition For Expedited Relief filed by BellSouth Telecommunications, LLC d/b/a AT&T North Carolina in North Carolina Utilities Commission Docket P-55, Sub 1841 (filed July 25, 2011) at 4.

Chapter 7 bankruptcy on July 13, 2012. The NCUC did not issue its first relief order until September 27, 2012 long after Halo had filed for bankruptcy and stopped routing traffic and did not address Halo's liability to Wilkes.

In its *USF/ICC Transformation Order*, the FCC established that Rate-of-Return LECs Base Period revenues would be based on net wireless and intrastate terminating access revenues billed for usage from fiscal year 2011 ("FY2011") along with the forecasted interstate revenue requirement. Wilkes is a Rate-of-Return LEC. The FCC also stated that only FY2011 wireless and intrastate revenues that were collected by March 31, 2012 would count towards the Base Period revenues.⁵ Halo never paid Wilkes' invoices which caused financial harm that continues to perpetuate itself as the Base Period Revenues became the starting point for annual support.

After Halo filed for bankruptcy, Wilkes did submit a Proof of Claim in December 2012. It is Wilkes' understanding that Halo's estate does not have the assets to pay the amounts owed to Wilkes or any other ILECs that were financially harmed in this fraudulent access arbitrage scheme. Most recently Wilkes' filed a Petition for Limited Waiver with the FCC on April 14, 2014 as discussed in more detail below.

II. WILKES ASKED THE FCC FOR RELIEF

The FCC recognized that there would be situations where carriers would not collect all revenues associated with FY 2011 usage by March 31, 2012 and allowed for a waiver of the March 31, 2012 deadline in its *USF-ICC Transformation Order*. The FCC stated:

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

⁵ See *USF/ICC Transformation Order*, "[t]he adjusted Baseline will not include settlements regarding charges after the March 31, 2012 cut-off..." at footnote 1745.

jurisdiction. The adjusted Baseline will not include settlements regarding changes after the March 31, 2012 cut-off, and any carrier requesting such modifications to its Baseline shall, in addition to otherwise satisfying the waiver criteria, have the burden of demonstrating that the revenues are not already in its Baseline, including providing a certification to the Commission to that effect. Any request for a waiver should also include a copy of the decision requiring payment of the disputed intercarrier compensation. Any such waiver would be subject to the Commission's traditional "good cause" waiver standard, rather than the Total Cost Earnings Review specified below.⁶

Wilkes filed a petition with the FCC on April 14, 2014 asking for permission to include revenues associated with FY 2011 that were billed to Halo, although not collected due to an apparent scheme of Halo and their ultimate bankruptcy, to be included in the Baseline revenue. Wilkes believes there is good cause for the FCC to grant its waiver petition. The loss created by Halo's refusal to pay access charges, a subsequent bankruptcy and the fact that it will never pay what it owes Wilkes for services has been compounded by the circumstantial reduction in eligible recovery. This recurring impact would not have occurred except for the fact that the Halo situation unfortunately occurred at a time when the FCC was making monumental changes to the USF and ICC mechanisms. All of these reasons make up good cause in support of the FCC granting Wilkes' requested relief.

Wilkes' argument for good cause is further supported by four other previously filed waiver petitions by other ILECs that also face undue hardship as a result of the Halo events. TDS Telecommunications Corp. ("TDS Telecom") filed a petition for a limited waiver "to permit TDS Telecom to include within its Base Period Revenues unpaid amounts billed to Halo Wireless, Inc. for intrastate usage during Fiscal Year 2011, thereby rendering those amounts eligible for recovery pursuant to the Commission's eligible recovery mechanism."⁷ TDS Telecom does not

⁶ Id. at footnote 1745.

⁷ See Petition of TDS Telecommunications Corp. for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket No. 10-90 *et al.* (filed Aug. 10, 2012) at 2.

ever expect to collect the amounts it billed to Halo as a result of Halo's bankruptcy and subsequent liquidation of assets. TDS Telecom asserts that "fundamental fairness and the public interest dictate that the Commission waive its rules in this specific scenario," and the Commission "could not have predicted every permutation through which a carrier such as Halo would develop an elaborate scheme to avoid paying access charges in a way that would have such potential long-term revenue ramifications...due to the nature of the eligible recovery mechanism."⁸ Independent Telephone & Telecommunications Alliance filed in support of TDS Telecom and stated "Halo has evaded its obligation to pay applicable access charges by advancing a number of specious legal theories. Both the FCC and numerous state regulators have rejected Halo's claims, confirming that the access charges at issue were lawfully billed."⁹ The National Exchange Carrier Association et al. also filed in support of TDS Telecom and stated that "fundamental fairness and the public interest dictate the Commission waive Section 51.917(c) for all rate-of-return carriers harmed by Halo's access avoidance schemes."¹⁰

Three small Oklahoma ILECs (Cimarron Telephone Company, Cross Telephone Company, and Pottawatomie Telephone Company) filed a similar petition, arguing that "Halo's scam distorts the 2011 Base Period Revenue rules' impact on the Petitioners, cutting their future support and crippling their network investments," and insisting that "the statutory goal of universal service—promoting and assuring the availability of quality services at just, reasonable, and affordable rates in rural areas—will be severely compromised by strict adherence to the

⁸ *Id.* at pg. 3-4 and 12.

⁹ See Comments of the Independent Telephone & Telecommunications Alliance WC Docket No. 10-90 *et al.* (filed Oct. 1, 2012) at 3.

¹⁰ See 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 WC Docket No. 10-90 *et al.* (filed Oct. 1, 2012) at 2-3.

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⁸ *Id.* at pg. 3-4 and 12.

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2011 Base Period Revenue rules.”¹¹ Like Wilkes, the three Oklahoma ILECs were seeking relief from the Commission as there are no alternatives for reversing the financial damages caused by the Halo events. Wilkes agrees that “[b]ut for the actions of Halo in instituting its scam – pulling traffic from legitimate carriers that would have been charged access by Petitioners, and then filing bankruptcy – these revenues would have been included in Petitioners’ 2011 Base Period Revenues.”¹² The United States Telecom Association (“USTelecom”) filed comments in support of the Oklahoma ILECs wherein USTelecom states that “the Petitioners and all other similarly situated carriers should be able to include the 2011 ICC payments Halo owes in their Eligible Recovery baseline revenues.”¹³

Guadalupe Valley Telephone Cooperative (“GVTC”) filed a petition seeking expedited treatment from the Commission. “GVTC was essentially a victim of an access arbitrage scheme, the impact of which is further amplified by the company’s inability to include the amounts billed to Halo in its Base Period Revenue, leaving GVTC deprived of both revenue it should have collected from Halo and fairly assessed recovery mechanism funding.”¹⁴

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. (“Texas ILEC Petitioners”) also filed a petition seeking expedited treatment from the Commission. “The events described...have produced a recurring penalty for the Petitioners, as they will never receive the amounts owed by Halo *and* the negative annual

¹¹ See Petition of Cimarron Telephone Company, Cross Telephone Company, and Pottawatomie Telephone Company for Limited Waiver of 47 WC Docket No. 10-90 *et al.* (filed Nov. 19, 2012) at iv.

¹² *Id.* at 9.

¹³ See Comments of the United States Telecom Association WC Docket No. 10-90 *et al.* (filed Jan. 2, 2013) at 1.

¹⁴ See Petition of Guadalupe Valley Telephone Cooperative, Inc. for Limited Waiver of 47 C.F.R. § 51.917(c), WC Docket No. 10-90 *et al.* (filed March 6, 2014) at 3.

impact on the Petitioners' recovery mechanism funding puts them in a precarious position where seeking relief from the Commission is the only viable option left at this point."¹⁵

The reduction of Base Period Revenues experienced by Wilkes because of Halo's fraud and refusal to pay invoices was not just a one-time impact. It continues to cause a financial impact to Wilkes every year the Base Period Revenue is used to help calculate support. The cumulative effects of reduced annual funding for network investment and operation solely because of Halo's dishonest actions will be felt by customers over time. The Base Period Revenue is a critical starting point to calculate the Company's Eligible Recovery and is part of the transitional recovery mechanism established by the Commission expressly to mitigate the impact of *USF/ICC Transformation Order* on carrier revenues and investments. FCC grant of its Petition would allow the initial calculation of Eligible Recovery to accurately represent the Company's FY 2011 Base Period Revenue. Further, grant of the limited waiver would serve the public interest because Wilkes would be able to continue to serve its customers consistent with the FCC's National Broadband Plan, USF Reform, and IP Transition goals while having the benefit of the transitional recovery mechanism to the full extent intended by the Commission.

On August 7, 2014, the FCC issued an Order in WC Docket No. 10-90 and CC Docket No. 01-92 granting portions of the petitions filed by TDS and the Oklahoma ILECs.¹⁶ In the Halo Order, the FCC said "[w]e grant Petitioners' waiver requests subject to the following [five] conditions..."¹⁷ Wilkes is hopeful the FCC will grant its petition. If the FCC does grant the petition and also imposes the same conditions to meet as in the Halo Order, there is one condition

¹⁵ See 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), WC Docket No. 10-90 et al. (filed March 6, 2014) at 5.

¹⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 and CC Docket No. 01-92, Order, FCC 14-121 (rel. Aug. 7, 2014) ("*Halo Order*").

¹⁷ Id. at 23.

that Wilkes has not already met and that is “a court or state regulatory agency of competent jurisdiction has made a finding of liability regarding the compensation for such traffic.”¹⁸ In the Halo Order, the FCC mentioned that “...nine state PUCs found Halo liable to incumbent LECs for disputed intrastate access charges.”¹⁹ On August 12, 2014, the FCC released a Public Notice asking for comments on Wilkes’ petition filed on April 14, 2014.²⁰

¹⁸ Id. at 23.

¹⁹ See *Halo Order* at 14.

²⁰ See Public Notice, DA 14-1176, (rel. Aug. 12, 2014). Comments are due September 11, 2014 and reply comments are due September 26, 2014.

III. REQUESTED ACTION

Wilkes believes that Halo is liable for billed intrastate switched access and CMRS charges for usage between January 2011 and August 2012. For the reasons stated above, Wilkes requests a decision confirming that Halo was indeed liable to Wilkes for intrastate access and CMRS charges. Wilkes believes this may be necessary in order to get FCC approval of its Petition and to be able to incorporate amounts unpaid by Halo for FY2011 in its Base Period Revenue. This additional amount in the Base Period Revenue would benefit Wilkes and its members.

Respectfully submitted,



Eric S. Cramer
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September 5, 2014

Attachment

Declaration of Eric S. Cramer

1. My name is Eric S. Cramer and I am CEO for Wilkes Telephone Membership Corporation ("Wilkes").
2. I certify that Wilkes did bill almost \$476,000 to Halo Wireless, Inc. for usage terminated between January 2011 and August 2012 and that none of the amounts billed were ever paid by Halo Wireless, Inc.
3. The methods used by Wilkes accurately reflected the proper jurisdiction of minutes of use and billing as indicated by SS7 records for Halo Wireless traffic that was terminated by Wilkes.
4. I declare under penalty of perjury that the facts contained in the Declaration, and in the Complaint and Petition are true and correct to the best of my knowledge, information and belief.



Eric S. Cramer
CEO
Wilkes Telephone Membership Corporation

September 5, 2014