**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 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 Reform – Mobility Fund | ) | WT Docket No. 10-208 |

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

**<u>EMERGENCY REQUEST FOR EXPEDITED TREATMENT</u>**

**PETITION OF WILKES TELEPHONE MEMBERSHIP CORPORATION FOR LIMITED AND EXPEDITED 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 Wilkes Telephone Membership Corporation's ("Wilkes'" 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.

"the Company's") emergency request[2] 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 Wilkes' request for a limited waiver of 47 C.F.R. Section 51.917(c). Wilkes has shown good cause exists for granting the waiver, and that granting the waiver would be in the public interest. Further, the FCC has granted waivers submitted by other carriers in similar situations. NTCA therefore joins with Wilkes in requesting that the Commission grant Wilkes' requested waiver as expeditiously as possible.

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

Wilkes is a rural incumbent local exchange carrier ("RLEC") operating in rural parts of western North Carolina. The company serves approximately 8,900 access lines in its service area. Wilkes 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 Wilkes' USF and ICC funding will in turn endanger the Company's ability to continue to provide uninterrupted, high-quality service to its customers.

As Wilkes detailed in its petition, the Company began terminating traffic from Halo Wireless, Inc. ("Halo") in December of 2010, and billed Halo for the traffic it sent during the

---

2 *Connect America Fund et. al.,* WC Docket No. 10-90 *et al.,* "Emergency Request for Expedited Treatment: Petition of Wilkes Telephone Membership Corporation for Limited Waiver of 47 C.F.R. § 51.917(c)," filed April 14, 2014 ("Wilkes Petition.")

3 47 C.F.R. § 51.917(c).

period of January 2011 through August 2012. The total amount ultimately billed by Wilkes to Halo for this period was almost $476,000.[4] However, Halo refused to pay any intercarrier compensation charges to Wilkes. Wilkes participated in a Halo-related proceeding, Docket No. P-55, Sub 1841, before the North Carolina Utilities Commission ("NCUC"). However, Halo filed for bankruptcy on August 8, 2011, temporarily staying all regulatory proceedings. In July 2012, Halo was forced from Chapter 11 to Chapter 7 bankruptcy. The NCUC did not issue its first relief order until September 27, 2012.

Wilkes submitted a bankruptcy proof of claim in December 2012. Wilkes asserts that the Halo estate does not have the necessary assets to "pay the amounts owed to Wilkes or any other ILECs that were financially harmed in this fraudulent access arbitrage scheme."[5] Wilkes' sole recourse is to seek waiver from the Commission.

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, Wilkes requests that the Commission allows the company to include in the Company's Base Period Revenue the $147,149.01 owed to it by Halo for Fiscal Year 2011 usage.[6] Wilkes maintains that not including these revenues in the Base Period Revenue would not only create a one-time impact, but would "continue[] to cause a financial impact to Wilkes every year the Base Period Revenue is used to help calculate support."[7] Further, "[the] negative impact on [Wilkes'] recovery mechanism…has limited the [Company's] ability to invest in and improve its network."[8]

---

[4] Wilkes Petition, p. 3.
[5] *Id.,* p. 5.
[6] *Id.,* p. 10.
[7] *Id.*, p. 9.
[8] *Id., pp. 1-2.*

## III. WILKES 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."[9] 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."[10]

As Wilkes detailed in its petition, the inability to collect nearly $150,000 in revenues owed was through no fault of its own, but rather due to the actions of Halo, with whom Wilkes had conducted business in good faith. Compounding this injustice will be the fact that, should the Commission not grant the requested waiver, Wilkes 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 Wilkes must suffer once for

---

9 47 C.F.R. § 1.3.

10 *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.

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 investments."[11] Wilkes further asserts that "grant of the limited waiver would allow the initial calculation of Eligible Recovery to accurately represent the Company's FY 2011 Base Period Revenue,"[12] and NTCA concurs.

Granting Wilkes' request is clearly in the public interest. If not granted the waiver, Wilkes will take a significant financial hit that will adversely affect its ability to continue to invest in its network, which will ultimately negatively affect Wilkes' customers. As Wilkes notes, "[t]he 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."[13] Wilkes 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.

Recently, the Commission issued an Order[14] granting similar petitions filed by TDS Telecommunications Corp. and jointly by Cimarron Telephone Company, Cross Telephone Company, and the Pottawatomie Telephone Company. In the Order, the Commission wrote

---

11 Wilkes Petition, p.9.

12 *Ibid*.

13 *Ibid.*

14 *In the Matter of Connect America Fund, Developing a Unified Intercarrier Compensation Regime, Petitions for Waiver of Section 51.917(b)(7) of the Commission's Rules,* WC Docket No. 10-90, CC Docket No. 01-92, "Order" (adopted August 7, 2014) ("Order.")

> We believe that incumbent LECs, upon a showing of good cause, should be permitted to include in their recovery calculations revenues associated with traffic eligible for compensation that was terminated during FY 2011 and that otherwise meets the criteria spelled out in our revenue recovery rules. Including such revenue conforms to the policies underlying the recovery mechanism, and excluding them would undermine those policies.[15]

As detailed herein, Wilkes has shown good cause for the requested waiver to be granted. The Commission should do so in an expeditious manner.

## IV. CONCLUSION

For the foregoing reasons, NTCA urges the Commission to grant this emergency request for expedited treatment without delay, and allow Wilkes to include in the Company's Base Period Revenue the $147,149.01 that was owed to Wilkes by Halo for FY 2011.

Respectfully Submitted,

NTCA THE RURAL BROADBAND ASSOCIATION®

By: /s/ Jill Canfield
Jill Canfield
Vice President of Legal and Industry, Asst. General Counsel
jcanfield@ntca.org

By: /s/ Richard J. Schadelbauer
Richard J. Schadelbauer
Economist
rschadelbauer@ntca.org

4121 Wilson Blvd, Ste. 1000
Arlington, VA 22203
(703) 351-2000

---

15 *Id.,* p. 1.