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BOARD CERTIFIED Administrative Law

October 17, 2011

Written Ex Parte; Via Electronic Filing
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

RE: *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 Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206 of the Commission's rules, Halo Wireless, Inc. ("Halo") respectfully submits this written *ex parte* communication into the above-captioned proceedings. This letter responds to the submission of the Eastern Rural Telecom Association ("ERTA") dated October 14, 2011.[1]

ERTA's submission makes a number of false representations of material fact, and mischaracterizes Halo and its traffic. The allegations that Halo is engaging in some kind of fraud, is refusing in any way to compensate ILECs for termination, and is sending "phantom traffic" or "laundering traffic" are all completely baseless. ERTA members are entitled to their own opinions, but they are not entitled to their own facts. Apparently, they believe that repeated prevarication somehow makes it all true. The Commission, however, cannot engage in this kind of magical thinking.

Halo is a CMRS provider. As such, it can and does provide "telephone exchange service."[2] Halo has authority from this Commission to provide CMRS-based telephone exchange service to any "end user" business customer that has its own wireless CPE and connects to Halo in an MTA, thereby obtaining the ability to originate and receive calls within that MTA. The service arrangement at issue uses new technology, but it is functionally the same as what an ILEC provides to a business customer with a PBX. This is merely a new and promising wireless telephone exchange service to end users. The other thing ERTA refuses to acknowledge is that Halo also has consumer customers that are presently enjoying 4G wireless broadband in *rural* areas. We thought the Commission *wanted* CMRS to compete with the ILECs and to deploy

[1] Available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021714450.

[2] *See Local Competition Order* ¶¶ 1004, 1006, 1008.

wireless broadband to consumers. Were all of the statements to this effect in countless reports and orders not the true sentiment and goal?

Halo's "high volume" customer is an end user, not an IXC. Two different courts – in four separate opinions – have so held. Those courts held that Halo's "high volume" customer is fully entitled to purchase telecommunications service as an end user, and cannot be compelled to subscribe to the ILECs' exchange access tariffs. *See* Transcom Enhanced Services, LLC Written *Ex Parte* (October 11, 2011).[3] Halo is providing "end user" telephone exchange service to Transcom. Every Halo-related call that the ILECs are terminating is originated by Transcom using wireless CPE in the same MTA. This traffic is *not* exchange access traffic. It is, as a matter of law, subject to § 251(b)(5), since it is intraMTA and "non-access."

Further, this traffic is not "phantom traffic." The RLECs receive sufficient signaling information to identify and bill the appropriate provider."[4] All Halo traffic contains address signal content in both the CPN and CN parameters. Neither Halo nor Transcom manipulate or change CPN address signal content. Halo does populate the CN with a Halo number, but that is perfectly in accord with industry standards. This is exactly what any ILEC would do when serving a business user that has an ISDN PRI PBX and originates a call from a station with an identifier other than the Billing Telephone Number ("BTN") associated with the PBX system. The RLECs can obviously identify both the end user customer originating the call (Transcom) and the "responsible carrier" (Halo). They know the entity from whom they may seek *reciprocal compensation*: Halo.

Since Halo and the ERTA members do not at present have an interconnection agreement, and since all of the traffic involved is "non-access,"[5] the applicable compensation regime is "no compensation." This is exactly the express result imposed by the Commission in *T-Mobile*.[6] *T-Mobile* also provides a remedy. If the ERTA members wish to be paid reciprocal compensation then all they need to do is notice Halo that they "request interconnection" and desire to "invoke the negotiation and arbitration procedures contained in section 252 of the Act." From and after receipt of that notice the ERTA members will be entitled to reciprocal compensation, under the Commission's "interim" rules. *See* 47 C.F.R. § 20.11(e).

Halo is already paying reciprocal compensation to over 50 ILECs. More than 50% of Halo's monthly operating expense is related to these payments. ERTA's assertion that Halo

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[3] Available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021713675.

[4] *See* NPRM and FNPRM, *Connect America Fund et al*., WC Docket Nos. 10-90 *et al*., FCC 11-13, ¶ 37 and note 719, 26 FCC Rcd 4554 (Feb. 9, 2011) ("*2011 ICC NPRM*") (defining "phantom traffic" as "unidentifiable and unbillable" because the terminating provider cannot "identify and bill the appropriate provider.")

[5] *See* 47 C.F.R. § 20.11(d).

[6] Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile*"). Note 57 expressly provides that "Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination."

refuses to pay anything is flatly incorrect. They simply will not follow the rules or use the remedy given to them. When they use the *T-Mobile* remedy they will be paid reciprocal compensation from and after the date of a 20.11(e)-compliant notice.

The ERTA members, however, are not satisfied with the prospect of payment that "merely" recovers "a reasonable approximation of the additional costs of terminating" these calls. *See* § 252(d)(2)(A)(ii). Instead, they desire payment in the form of exchange access, and for every minute regardless of whether they have invoked § 20.11(e). In order to accomplish this result they have engaged in a campaign of repeated defamation of both Halo and its "high volume" end user customer before state commissions and the FCC. They falsely and incorrectly claim that Halo is not "really" CMRS"; the calls are not "really wireless" and Halo's customer is "really" just an IXC. They also constantly repeat scurrilous and unsupported claims that Halo and/or its "high volume" customer are engaging in signaling improprieties.

The bottom line is that they are simply not telling the truth, and they refuse to accept what the Act and rules require. The Commission cannot and should not accept their characterizations or reward them for their misdeeds by trying to impose exchange access on what is clearly telephone exchange service traffic. When ERTA truly wants to be paid for terminating calls, all they have to do is use the 47 C.F.R. § 20.11(e) remedy the Commission gave them. They should be sending "requests for interconnection" to Halo instead of engaging in *ex parte* communications that would violate 47 C.F.R. § 1.17 if proffered in an adjudicatory proceeding as part of their illicit attempts to recover amounts they are not due.

Respectfully Submitted

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