

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Request for Review By Corr Wireless)	
Communications, LLC of Decision of Universal)	WC Docket No. 05-337
Service Administrator)	CC Docket No. 96-45
)	
)	
)	

OPPOSITION OF VERIZON WIRELESS

Verizon Wireless, pursuant to Section 54.719 of the Commission’s rules, 47 C.F.R. § 54.719, hereby opposes the Request for Review filed by Corr Wireless Communications, LLC (“Corr”).¹ Corr asks the Commission to direct the Universal Service Administration Company (USAC) to include in the pool of funds available to competitive eligible telecommunications carriers (CETCs), such as Corr, the high cost support funds that Verizon Wireless volunteered to relinquish as a condition of its merger with Alltel Communications. Corr’s interpretation of the Verizon-Alltel merger order is erroneous as a matter of law, is at odds with the policy concerns underlying the merger condition, and would result in an unjustifiable windfall for Corr and other CETCs. It is, moreover, procedurally defective as an untimely collateral attack on two Commission orders.

¹ See *In the Matter of Request for Review By Corr Wireless Communications, LLC of Decision of Universal Service Administrator*, CC Docket No. 96-45, WC Docket No. 05-337, Appeal from Decision of Administrator of High Cost Universal Service Fund (filed March 11, 2009)(“*Corr Appeal*”); see also *Comment Sought on Corr Wireless Communications, LLC, Request for Review of a Competitive Eligible Telecommunications Carrier High-Cost Support Decision of the Universal Service Administrative Company*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, DA 09-805 (WCB, rel. April 9, 2009).

I. BACKGROUND

In May 2008, the Commission adopted the *Interim Cap Order*, which capped the total annual high cost support available to CETCs in a given state at the level of support that CETCs in that state were eligible to receive during March 2008, annualized.² The purpose of the cap was the “need to control the explosive growth in high-cost universal service support disbursements”³ and to “halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund.”⁴

In November 2008, the Commission approved the merger of Verizon Wireless and Alltel Corporation.⁵ Some parties in that proceeding argued that the Commission should require Verizon Wireless and Alltel either to demonstrate the costs of providing universal service or to forego high cost support altogether.⁶ In order to provide further assurance that the proposed transaction was in the public interest, Verizon Wireless voluntarily “commit[ted] to accept a phase down of [CETC] support . . . over a five year period following closing of the transaction.”⁷

² *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008)(*Interim Cap Order*).

³ *Id.*, para. 1.

⁴ *Id.* at 8837, para. 5.

⁵ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) (*Merger Order*).

⁶ *Id.* at 17530-31, para. 193.

⁷ See *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 3, 2008) (*Verizon Wireless Letter*). The letter also contained other commitments, not relevant here, with respect to E911 location accuracy and roaming rates.

In the interests of clarity, set forth below is the full text of Verizon Wireless's voluntary commitment with respect to high cost support:

Specifically, Verizon Wireless commits to a five year transition during which Verizon Wireless's CETC high cost support would be phased out in equal increments. Support would be reduced 20 percent beginning 30 days following the closing of the transaction, or no later than December 31, 2008, whichever is earlier. If, however, the transaction does not close prior to December 31, 2008, support would be reduced 20 percent beginning the day after consummation. Support would be reduced in equal 20 percent increments annually thereafter, such that all CETC high cost support would be phased out five years after the the [sic] closing of the transaction. Our understanding is that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other CETCs. In the event that the Commission adopts a different transition mechanism or a successor mechanism to the currently capped equal support rule in a rulemaking of general applicability, however, then that rule of general applicability would apply instead.⁸

In its order approving the transaction, the Commission re-stated the voluntary commitment, as described in the *Verizon Wireless Letter*, including Verizon Wireless's "understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs."⁹ The Commission then concluded that it would condition its approval of the transaction "on Verizon Wireless's *commitment* to phase down its competitive ETC high cost support over five years, as discussed herein."¹⁰

The transaction closed on January 9, 2009. Since then, Verizon Wireless has worked with USAC to implement the merger condition. That process requires USAC to determine the amount of high cost support for which Verizon Wireless was eligible in 2008, pursuant to the *Interim Cap Order*, and identifying for USAC those amounts attributable to properties that

⁸ *Id.* at 1-2.

⁹ *Merger Order*, 23 FCC Rcd at 17531-32, para. 196.

¹⁰ *Id.* at 17532, para. 197 (emphasis added).

Verizon Wireless both retains and controls. (Properties that Verizon Wireless does not control or that it is required to divest are not subject to the 20 percent phase-down of high cost support.¹¹) This process is necessary in order for USAC to calculate the required reduction and remit payments to Verizon Wireless accordingly.

II. USAC HAS CORRECTLY APPLIED THE MERGER CONDITION

Corr contends that USAC has erred by failing to include in the pool of high cost funds available to other CETCs under the *Interim Cap Order* the high cost funds that Verizon Wireless voluntarily agreed to forego. In response to an inquiry from Corr, USAC explained that the *Merger Order* “includes no provisions for the redistribution of support to other CETCs. In fact, the *Order* specifically states that the reduction in payments to Verizon Wireless and Alltel will not result in an increase in High Cost Support payments to other CETCs.”¹² Corr argues that USAC’s construction of the merger condition is “directly contrary” to the *Interim Cap Order*, pursuant to which the number of CETCs receiving high cost support does not affect the size of the capped pool of funds, and that the *Merger Order* cannot be construed to “override” the cap formula.¹³

Contrary to Corr’s arguments, however, USAC’s construction of the *Merger Order* is correct. The Commission conditioned its approval of the transaction “on *Verizon Wireless’s* *commitment* to phase down its competitive ETC high cost support over five years, *as discussed*

¹¹ See *Verizon Wireless Letter* at 2 (“The terms of these commitments do not apply to any properties that are to be divested, or to any properties as to which Verizon Wireless lacks control.”); *Merger Order*, 22 FCC Rcd at 17531, para. 196.

¹² Letter from Karen Majcher, Vice President, High Cost and Low Income Division, USAC, to Donald J. Evans, Fletcher, Heald & Hildreth, P.L.C. (Feb. 25, 2009), at 1 (*USAC Letter*)(citing *Merger Order*, 22 FCC Rcd at 17531, para. 196). See also *id.* at 1-2 (“All Verizon Wireless and Alltel High Cost support payments subject to the reduction provisions included in the *Verizon Wireless and Alltel Merger Order* are effectively removed from the CETC interim cap and do not ‘free up’ additional dollars for other CETCs in any jurisdiction.”). A copy of the *USAC Letter* is attached to the *Corr Petition*.

¹³ *Corr Petition* at 5-6.

herein.”¹⁴ The only discussion of “Verizon Wireless’s commitment” is contained in the preceding paragraph, which quotes, nearly verbatim, the *Verizon Wireless Letter*, including the “understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs.”¹⁵ It is clear, therefore, that the universal service condition adopted by the Commission is the commitment reflected in the *Verizon Wireless Letter* and quoted in the order. Corr is simply wrong to state that “[n]owhere did the Commission consider, much less adopt” Verizon Wireless’s “understanding” of the commitment it voluntarily made or that the terms of Verizon Wireless’s commitment letter are somehow not relevant.¹⁶ Indeed, given that the Commission expressly adopted Verizon Wireless’s *voluntary* commitment,¹⁷ the company’s understanding of that commitment, as reflected in both the letter and the *Merger Order*, is highly relevant if not controlling. Verizon Wireless would not have agreed to forego high cost funding if that funding were then made available to its competitors.

Furthermore, Corr’s view of the merger condition would undercut the policy rationale behind both the *Interim Cap Order* and the *Merger Order*. The *Interim Cap Order* reflects the Commission’s concern about the need to control the growth in high cost support to CETCs. In its discussion of the merger condition, the Commission observed that Alltel was the largest recipient of high cost CETC support.¹⁸ Verizon Wireless’s commitment to phase down its high cost support thus advanced the Commission’s efforts to control the growth of CETC high cost

¹⁴ *Merger Order*, 23 FCC Rcd at 17532, para. 197 (emphases added).

¹⁵ *Id.* at 17531-32, para. 196.

¹⁶ *Corr Petition* at 5.

¹⁷ *Merger Order*, 23 FCC Rcd at 17532, para. 197.

¹⁸ *Id.*

support.¹⁹ Under Corr’s view, however, there would be no reduction in high cost support payments, because the payments relinquished by Verizon Wireless would merely be re-distributed to other CETCs. It is hard to imagine what policy objective would be served by transferring funds from one competitor to another.

Nor is there any merit to Corr’s argument that the *Merger Order* cannot “override” the cap order.²⁰ Because the *Interim Cap Order* established a “fixed sum” of high cost support available to CETCs in a given state that “does not vary with the number eligible recipients,”²¹ Corr appears to believe that the order somehow constrains the Commission’s ability to address universal service concerns in other proceedings. Corr cites no support for this strange proposition, and there is nothing in the cap order that precludes the Commission from limiting, in a subsequent order, high cost funds available to CETCs. It is true that the *Interim Cap Order* reflects “the formally adopted policy of the full Commission,”²² but so too does the *Merger Order*. In fact, it is Corr’s construction of the *Merger Order* that is at odds with the cap order. Rather than accepting its share of the capped amount in a given state (an amount likely to decrease, on a per line basis, as wireless providers collectively win additional subscribers), Corr seeks a windfall for itself by espousing an interpretation of the *Merger Order* that would greatly increase the high cost support available to it and other CETCs that compete with Verizon

¹⁹ *Id.* at 17547, Statement of Chairman Kevin J. Martin (“the phase-out of high-cost competitive ETC funding to . . . [Verizon Wireless and Sprint Nextel] will provide significant benefits to the fund” by “reducing the pressure on the fund over time”).

²⁰ *See, e.g., Corr Petition* at 6.

²¹ *Id.* at 2.

²² *Id.* at 6.

Wireless and Sprint Nextel.²³ Corr fails to explain -- because it cannot -- how such an unjustified windfall to some CETCs would advance the policy objective of halting the growth of the high cost fund that led the Commission to adopt the *Interim Cap Order*.

III. CORR'S REQUEST IS AN UNTIMELY COLLATERAL ATTACK ON THE MERGER ORDER AND THE INTERIM CAP ORDER

Corr criticizes USAC for its application of the Verizon Wireless-Alltel *Merger Order*, but USAC is simply implementing what the full Commission adopted in that order. Specifically, the Commission referenced Verizon Wireless's commitment to reduce CETC support annually as well as Verizon Wireless's understanding that the reduction would not result in a windfall to competing CETCs. It should have been apparent to Corr that the reduced CETC support would not be flowing to it or other carriers; indeed, as noted above, such a flow-through would completely undermine the rationale for the reduction in Verizon Wireless's CETC support.

Yet, unlike other companies that were concerned by some aspect of the *Merger Order*, Corr failed to petition for reconsideration. Under Section 1.106 of the Commission's Rules, petitions for reconsideration must be filed within 30 days of Public Notice of the order, a deadline Corr clearly ignored.²⁴ Its Request must be dismissed as an untimely petition for reconsideration.

It is apparent from the petition that Corr's real complaint concerns neither the *Merger Order* nor USAC's understanding of it. Rather, Corr is aggrieved by the effects of the *Interim Cap Order*. Coincident with adoption of the cap, the Commission granted numerous pending

²³ Although the thrust of the *Corr Petition* is directed at the high cost funds previously received by Verizon Wireless and Alltel, Corr notes on the last page of its petition that high cost funds relinquished by Sprint Nextel should also be re-distributed to other CETCs. *Id.*

²⁴ 47 C.F.R. § 1.106.

applications for CETC designations in certain states.²⁵ Because these newly-designated CETCs had not received any high cost support as of March 2008, the effect of these designations was to reduce immediately the level of per line support available to CETCs in those states.²⁶ One of the affected states is Corr's home state of Alabama: Corr states that the new CETC designations reduced its share of funds there by more than 50 percent.²⁷ For this reason, Corr refers variously to the "devastating effect of the cap on certain carriers such as Corr,"²⁸ the "disastrous shortfall" in funds it experienced,²⁹ and the "arbitrary and capricious" nature of the Commission's actions.³⁰ Regardless of Corr's opinion of the *Interim Cap Order*, however, it cannot be permitted to re-litigate the merits of that order here.

What Corr seeks here is another vehicle for obtaining relief from the cap order, but Corr's "unilateral and self-serving understanding"³¹ of the *Merger Order* is, as explained above, wrong as a matter of law and makes no sense as a policy matter. Moreover, Corr fails to recognize that it is in no way harmed by the *Merger Order*. It does not lose any high cost funding as a result of the commitment by Verizon Wireless to forego funds to which it would otherwise be entitled. To the contrary, Corr and other CETCs stand to increase their *pro rata* shares of high cost funds because their shares will no longer be diluted by any line growth Verizon Wireless (or Sprint Nextel) may experience. Whatever prejudice Corr believes it has suffered under the cap order, its "appeal" of USAC's implementation of the *Merger Order* lacks merit and should be denied.

²⁵ See *Interim Cap Order*, 23 FCC Rcd at 8857, App. B.

²⁶ *Corr Petition* at 3.

²⁷ *Id.*

²⁸ *Id.* at 1.

²⁹ *Id.* at 2.

³⁰ *Id.* at 3.

³¹ *Corr Petition* at 5.

IV. CONCLUSION

For these reasons, Verizon Wireless respectfully requests that the Bureau deny Corr's request that the Commission direct USAC to include in the pool of funds available to CETCs, such as Corr, the high cost support funds that Verizon Wireless volunteered to relinquish as a condition of its merger with Alltel.³²

Respectfully submitted,

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³² The Commission should also deny a similar request filed by the Universal Service For American Coalition. *See Ex Parte* Letter from Todd D. Daubert, Counsel to USA Coalition, to Michael J. Copps, Acting Chairman, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337 (March 13, 2009)(asking the Commission to provide guidance to USAC that the calculation of the capped amount of support to CETCs “is unaffected by the *Verizon Wireless-Alltel Merger Order*”).

CERTIFICATE OF SERVICE

I, Sarah Trosch, hereby certify that on May 11, 2009, a true and correct copy of the foregoing "Comments of Verizon Wireless" was served by first-class U.S. mail, postage prepaid, on the parties listed below:

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