

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

In the Matter of:

High-Cost Universal Service Support

WC Docket No. 05-337

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a/ SouthernLINC Wireless

(“SouthernLINC Wireless”), by its attorneys, hereby submits these comments in the above-captioned proceeding in response to the Public Notice requesting comment on the Corr Wireless Communications, LLC request for review of a decision by the Universal Service Administrative Corporation (“USAC”). Specifically, Corr Wireless requested the Federal Communications Commission (“FCC” or “Commission”) review and reverse USAC’s decision not to include universal service high-cost support funds disclaimed by Alltel and Verizon Wireless in connection with their merger last year in the pool of funds available for distribution under the competitive eligible telecommunications carrier (ETC) interim cap.¹ SouthernLINC Wireless agrees with Corr Wireless that, by excluding high-cost support funds disclaimed by Alltel and Verizon Wireless as a condition of their merger, USAC’s implementation of the interim cap violates the language of the *Interim Cap Order* and urges the Commission to reverse USAC’s decision.²

SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using Motorola’s proprietary Integrated Digital Enhanced Network (iDEN) technology to

¹ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, DA 09-805 (Apr. 9, 2009).

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, App. B, ¶ 40 (2008) (*Interim Cap Order*).

provide dispatch, interconnected voice, Internet access, and data transmission services over mobile phone handsets. SouthernLINC Wireless is licensed by the Commission to provide cellular communications services in Alabama, Georgia, the panhandle of Florida, and Southeast Mississippi, where it serves nearly 250,000 subscribers over 127,000 square miles.

SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless provider in Alabama and Georgia, servicing extensive rural territory along with major metropolitan areas and highway corridors, and as such is widely used by local and statewide governmental institutions, public utilities, and emergency services.

SouthernLINC Wireless is committed to offering high-quality telecommunications services to rural and underserved areas, and approximately half of the total handsets SouthernLINC Wireless supports are used by subscribers located outside of major metropolitan areas. SouthernLINC Wireless is also the wireless service provider to the state of Alabama and to many government agencies in Georgia. In fact, approximately 30% of the total handsets SouthernLINC Wireless serves are used by public employees, first responders, or utility personnel,³ which illustrates how important the services of SouthernLINC Wireless are to residents in those areas, particularly in times of crises. During the emergency conditions created by the fifteen named hurricanes and countless ice storms that have struck its service territory since SouthernLINC Wireless began operating in 1995, SouthernLINC Wireless was often the only available means of communications. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless in many instances provided the only immediate means of communication in Mississippi and Alabama. As such, SouthernLINC Wireless is the type of competitive eligible telecommunications carrier (“ETC”) Congress intended the universal service

³ The services provided to utility personnel facilitate the continued availability of power during emergencies.

fund to support and, therefore, has a vested interest in ensuring the fundamental fairness and long-term stability of the fund.

I. BACKGROUND

Consistent with its parent company's mission of providing key public utility services throughout rural areas, SouthernLINC Wireless has long sought to expand its offerings into rural and underserved areas throughout its service territory. To facilitate these efforts, in September 2004 SouthernLINC Wireless applied to the Federal Communications Commission for designation as an ETC in Alabama, Florida, and Georgia. Like many other ETC applications, however, SouthernLINC Wireless' applications remained pending at the FCC for four years while the Commission considered various proposals for reforming the non-rural USF distribution mechanism. In May 2008, as part of its *Interim Cap Order*, the Commission granted SouthernLINC Wireless' application for ETC status in Alabama.⁴ In November 2008, the State of Georgia granted SouthernLINC Wireless' application for designation as an ETC.⁵ Since its designation, SouthernLINC Wireless has launched its LifeLine Call Manager plan and its Link Up Activation fee discount, making it a fully operational ETC in the areas where it has been so designated.

However, even as the Commission approved SouthernLINC Wireless' application for ETC status, it undercut the ability of SouthernLINC Wireless to expand its services to

⁴ *Interim Cap Order*, App. B, ¶ 40.

⁵ *Application of Southern Communications Services, Inc. d/b/a SouthernLINC Wireless for Designation as an eligible Telecommunication Carrier in the State of Georgia*, Docket No. 27241, Order Granting ETC Status, Doc. No. 115983 (Nov. 18, 2008). Although SouthernLINC Wireless initially applied to the FCC for designation as an ETC in Georgia, during the four year period when SouthernLINC Wireless' application was pending before the FCC, the Georgia PSC determined that it has the authority to designate wireless carriers as ETCs. As such, the Georgia PSC became the appropriate venue for SouthernLINC Wireless to seek designation as an ETC. *See* Ga. Code Ann. § 46-5-222.

unserved and underserved areas by imposing the interim cap.⁶ The cap formula is essentially a simple one: a fixed sum is set for each state based on the support received by carriers in that state in March 2008, and that support is then divided among the carriers based on the percentage of total supported lines each carrier serves. In some areas, this formula has the effect of reducing the amount of support to which carriers in that area otherwise would have been entitled by more than 50%. This reduction in available universal support results in consumers living in rural areas facing higher bills or lacking access to services that are readily available in urban areas, in contravention of the universal service provisions of the Act.⁷ To make matters worse, USAC's decision to reduce the total amount of capped support available in some states by the amount of USF support foregone by Verizon and Alltel as a condition of their merger further limits rural consumers' access to affordable telecommunications and information services.

II. USAC'S ERRONEOUS INTERPRETATION OF THE VERIZON WIRELESS – ALLTEL MERGER ORDER VIOLATES THE CLEAR LANGUAGE OF THE INTERIM CAP ORDER

As Corr demonstrates in its Petition, USAC has erroneously interpreted the *Interim Cap Order* and the *Verizon Wireless-Alltel Merger Order* in a manner that has impermissibly reduced the already limited funds available to competitive ETCs under the interim cap.⁸ When the Commission implemented the interim cap in May 2008, it capped the amount of support all competitive ETCs are eligible to receive in a given state at annualized March 2008 levels. The plain language of the *Interim Cap Order* confirms that the cap is static:

⁶ See, generally, *Interim Cap Order*.

⁷ *Contra* 47 U.S.C. § 254(b)(3) (requiring “reasonably comparable” services and rates in urban and rural areas).

⁸ *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 Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258 (rel. Nov. 10, 2008) (*Verizon Wireless-Alltel Merger Order*).

“[A]nnual support for competitive ETCs in each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, on an annualized basis.”⁹

Nothing in the language of the *Interim Cap Order* indicates that the capped support amount varies based on the number of ETCs in the state.

USAC remained silent on how it would administer these provisions however, and as SouthernLINC Wireless has noted previously in this docket, transparency at USAC is extremely limited.¹⁰ In early 2009, after inquires from several carriers, USAC admitted that it had been calculating USF support amounts based on March 2008 levels reduced by the amount of support that Verizon Wireless and Alltel had voluntarily agreed to forgo as a part of its merger.¹¹ Despite the clear language and intent of the *Interim Cap Order*, USAC revealed that it had construed the *Verizon Wireless-Alltel Merger Order*, which was adopted in a wholly unrelated proceeding, to find that:

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.¹²

The decision had the effect of removing millions of dollars in support from the total amount of capped USF support available to competitive carriers in states where those companies provided

⁹ *Id.*

¹⁰ See Reply Comments of SouthernLINC Wireless on Centennial Communications Corp.’s Petition for Waiver of the December 31, 2008 Deadline For Submitting Changes To Centennial’s March 2008 High-Cost Support Data Submitted To USAC, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (submitted May 6, 2009).

¹¹ See, e.g., Letter from Karen Majcher, USAC, to Mr. Donald Evans, Fletcher, Heald & Hildreth, P.L.C. dated Feb. 25, 2009 (attached to Corr Petition) (citing *Verizon Wireless-Alltel Merger Order* ¶ 196) (*USAC Letter*).

¹² *USAC Letter* at 1-2.

service.¹³

First, as a procedural matter, USAC lacks authority to make policy or interpret ambiguous Commission rules and precedent. When the Commission designated USAC to be the administrator of the universal service support mechanism, the Commission stated that USAC's role would be "exclusively administrative."¹⁴ Indeed, the Commission went so far to state that "USAC may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress ... [and that w]here the Act or the Commission's rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed."¹⁵ Here, USAC has clearly engaged in extensive interpretation of the Commission's orders in order to arrive at a result that is directly contradicted by the language of the *Interim Cap Order*. Indeed, the lone fact that the FCC "ruling" upon which USAC sought to justify its decision is, under the most favorable interpretation to USAC, a *sub silentio* ruling, should have raised a red flag that FCC guidance was mandatory under the FCC's rules.¹⁶ To the extent that USAC believed that the *Verizon Wireless – Alltel Merger Order* overrode or modified the

¹³ To the knowledge of SouthernLINC Wireless, USAC has never clarified how it is treating the support Sprint Nextel voluntarily agreed to forgo in order to obtain approval for its merger with Clearwire. *See Sprint Nextel Corp. and Clearwire Corp., Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, File Nos. 0003462540, WT Docket No.08-94, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶¶ 106-108 (2008) (*Sprint Nextel – Clearwire Merger Order*) (describing agreement by Sprint Nextel to forgo universal service support as a condition for approval of its merger with Clearwire). The FCC could not have modified the *Interim Cap Order* in the *Sprint Nextel – Clearwire Merger Order* for the same reasons it could not have modified it in the *Verizon Wireless – Alltel Merger Order*. Therefore, in the order granting the Corr Petition, the Commission should also provide guidance to USAC that USF support disclaimed by Sprint Nextel cannot be excluded from the pool of funds available for distribution to competitive ETCs under the interim cap.

¹⁴ *Changes to the Bd. of Directors of NECA*, 13 FCC Rcd 25058, ¶ 16 (1998); *see also* 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.").

¹⁵ *Id.*

¹⁶ *See, e.g.*, 47 C.F.R. § 54.702(c).

Interim Cap Order, USAC should have formally sought instructions from the Commission pursuant to 47 C.F.R. § 54.702(c).¹⁷ USAC cannot engage in this type of decision-making absent formal instructions from the Commission – instructions that the Commission has not issued.

Even assuming *arguendo* that USAC did not exceed the limits of its authority in interpreting the two orders, USAC’s interpretation of the *Interim Cap Order* and the *Verizon Wireless – Alltel Merger Order* cannot be supported by the text of either the *Interim Cap Order* or the *Verizon Wireless – Alltel Merger Order*. The *Interim Cap Order* clearly set forth the manner in which support must be calculated:

Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.¹⁸

Under this two-step approach of calculating support, the entry or exit of any specific ETC in any given state has no effect on the available state cap support amount. Indeed, the number of ETCs in a given state is only relevant to the extent it increases or decreases the state *uncapped* support

¹⁷ 47 C.F.R. § 54.702(c) (instructing USAC that where the “Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”). The same logic applies regarding the *Sprint Nextel – Clearwire Merger Order*.

¹⁸ *Interim Cap Order* ¶ 27.

amount and thus the percentage of their reimbursable costs that the competitive ETCs within the state will be reimbursed.

The Commission explicitly confirmed in the *Interim Cap Order* that the number of ETCs has no effect on the cap level:

Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support. In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission. . . . These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.¹⁹

As the Commission explained, additional ETC designations, and thus withdrawal of certain ETCs from the market, have no impact on the available state cap support amount.

USAC's decision to reduce the total support available to competitive ETCs despite the language of the *Interim Cap Order* was based upon supposed "provisions" in the *Verizon Wireless-Alltel Merger Order* that USAC argues prevent USF support previously received by Alltel and Verizon Wireless from being included when calculating the level at which USF support is capped within a state.²⁰ In the *Verizon Wireless-Alltel Merger Order*, the Commission adopted, as a merger condition, Verizon Wireless' voluntary commitment to phase out its support incrementally by twenty percent annually over five years.²¹ While summarizing commenters' positions on the merger condition, the Commission paraphrased the "understanding" Verizon Wireless expressed in an *ex parte* filing that the reduction in its support would not result in an increase in support to other competitive ETCs.²² The Commission,

¹⁹ *Id.* ¶ 39.

²⁰ *USAC Letter* at 1-2 (citing *Verizon Wireless-Alltel Merger Order* ¶ 196).

²¹ *Verizon Wireless-Alltel Merger Order* ¶ 197.

²² *Id.* ¶ 196.

however, did not adopt Verizon Wireless' "understanding" of the interim cap.²³ Rather, the Commission was simply acknowledging Verizon Wireless' filing in the record.²⁴

Indeed, the FCC lacked the authority to modify the *Interim Cap Order* as part of its consideration of the proposed Verizon Wireless-Alltel merger. Specifically, the Commission cannot amend the two-step approach of calculating support for all competitive ETCs that the FCC adopted in the USF Reform proceedings (WC Docket No. 05-337 and CC Docket No. 96-45)²⁵ by adopting an order in an unrelated proceeding to consider an application for merger of two individual carriers (*i.e.*, Verizon Wireless and Alltel – WT Docket No. 08-95).²⁶ Any attempt to modify a ruling of general applicability by adopting an order in an unrelated proceeding to consider an application filed by two carriers would be fundamentally inconsistent with the requirements of the Administrative Procedure Act because of the lack of notice and opportunity to comment, among other reasons. Even if both orders were in the same proceeding such that the Commission potentially had the authority to amend the *Interim Cap Order* in the *Verizon Wireless-Alltel Merger Order*, it is well established that the Commission declines to address in merger proceedings matters in which the public interest would be better served through consideration and resolution in broader proceedings of general applicability.²⁷

²³ Indeed, the sole reference to Verizon Wireless' *ex parte* letter is in the "Record" subsection (as opposed to the "Discussion" subsection) of the USF section of the order. *Id.*

²⁴ As in the *Verizon Wireless-Alltel Merger Order*, the text of the *Sprint Nextel – Clearwire Merger Order* provides no support for Commission modification of the *Interim Cap Order*. See *Sprint Nextel – Clearwire Merger Order* ¶¶ 106-108.

²⁵ See, generally, *Interim Cap Order*.

²⁶ See, generally, *Verizon Wireless-Alltel Merger Order*. Likewise, the Commission could not have amended the *Interim Cap Order* as part of its consideration of the Sprint Nextel – Clearwire merger (WT Docket No. 08-94).

²⁷ See *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, 22 FCC Rcd 5662, 5758 (2007) ("The Commission previously has declined to address in merger proceedings matters in which the public interest would be better served through consideration and resolution in broader proceedings of general applicability.").

Accordingly, contrary to the suggestions of USAC, the Commission could not have modified a generally applicable rule on universal service support by adopting *sub silentio* a carrier's own interpretation of Commission policy submitted through an *ex parte* letter filed in a merger proceeding and never adequately discussed in the merger order.²⁸

III. CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to grant the Petition of Corr Wireless and reverse USAC's decision to exclude USF support disclaimed by Alltel and Verizon Wireless as a condition of their merger from the pool of funds available for distribution to competitive ETCs under the interim cap.

Respectfully submitted,



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²⁸ See *Verizon Wireless-Alltel Merger Order* ¶ 196.