

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

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

**REPLY COMMENTS OF VERIZON WIRELESS**

As Verizon Wireless demonstrated in its opposition comments,<sup>1</sup> the Request for Review filed by Corr Wireless Communications, LLC (Corr) fails to establish any error by the Universal Service Administrative Company (USAC) and should be denied.<sup>2</sup> Corr asks the Commission to direct 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. USAC acted within its authority as administrator of the high cost fund, and its actions are fully consistent with the Verizon Wireless-Alltel merger order.<sup>3</sup> Not only is the interpretation advanced by Corr and its

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<sup>1</sup> Opposition of Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45 (filed May 11, 2009).

<sup>2</sup> 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).

<sup>3</sup> *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*).

supporters erroneous as a matter of law and policy, Corr’s appeal is an untimely collateral attack on the *Merger Order*.

**I. USAC CORRECTLY APPLIED THE UNAMBIGUOUS TERMS OF THE MERGER ORDER**

Corr and its supporters contend that USAC exceeded its “exclusively administrative” role when it “decided” to exclude from the pool of high cost funds available to other CETCs the high cost funds that Verizon agreed to forego as a condition of its merger with Alltel.<sup>4</sup> Contrary to these parties’ assertions, however, USAC did not “make policy” or “interpret unclear provisions of the statute or rules” in violation of section 54.702(c) of the Commission’s rules.<sup>5</sup> Instead, USAC acted appropriately to implement the *Merger Order* and fulfill its duties to “administer[] . . . the high cost support mechanism”<sup>6</sup> and to “disburs[e] universal service support.”<sup>7</sup>

First, these parties attempt to manufacture some ambiguity in the *Merger Order* to suggest that USAC acted beyond the scope of its authority. These efforts fail, however, as the *Merger Order* is not ambiguous and USAC has applied it correctly. Some commenters assert that USAC’s understanding of the *Merger Order* is inconsistent with the interim cap on CETC funds that the Commission adopted six months earlier.<sup>8</sup> They argue that the amount of CETC funding available in a given state under the *Interim Cap Order* is not affected by the entry or exit

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<sup>4</sup> See, e.g., Joint Comments of the Cellcom Companies in Support of Request for Review, WC Docket No. 05-337, CC Docket No. 96-45, at 2-3 (filed May 11, 2009) (*Cellcom Comments*) (“USAC clearly overstepped its authority when it decided to exclude the VZW/Alltel funds”); Comments of SouthernLINC Wireless, WC Docket No. 05-337, CC Docket No. 96-45, at 6-7 (filed May 11, 2009) (*SouthernLINC Comments*); Comments of Rural Cellular Association in Support of Request for Review, WC Docket No. 05-337, CC Docket No. 96-45, at 6-8 (filed May 11, 2009) (*RCA Comments*).

<sup>5</sup> 47 U.S.C. § 54.702(c).

<sup>6</sup> *Id.* at § 54.702(a).

<sup>7</sup> *Id.* at § 54.702(b).

<sup>8</sup> See *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*).

of CETCs and that, therefore, USAC erroneously construed the *Merger Order* by removing from the capped CETC fund those funds disclaimed by Verizon Wireless.<sup>9</sup> This argument is unavailing, however, as the *Interim Cap Order* did not address the effect on the CETC cap of Verizon Wireless's voluntary commitment to relinquish high cost funding, a fact acknowledged by some of these same parties.<sup>10</sup> The *only* order to address this issue is the *Merger Order* itself, and it did so explicitly. In adopting the merger condition, the Commission reiterated Verizon Wireless's understanding that "the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other CETCs."<sup>11</sup> This condition does not conflict with the *Interim Cap Order* or create any ambiguity, because the cap order did not contemplate a carrier's decision to forego some of its high cost funding. USAC was correct -- in fact, obligated -- to implement the merger condition in a manner that did "not result in an increase in high cost payments to other CETCs."

Second, commenters try to escape the plain meaning of the *Merger Order* by suggesting that this language reflects merely Verizon Wireless's "understanding" of its voluntary commitment, which the Commission "paraphrased" but did not adopt.<sup>12</sup> This argument fails as well. The Commission adopted, without further elaboration, "Verizon Wireless's commitment to

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<sup>9</sup> See, e.g., Comments of the USA Coalition, WC Docket No. 05-337, CC Docket No. 96-45, at 5-6 (filed May 11, 2009) (*USA Coalition Comments*); *SouthernLinc Comments* at 7-8.

<sup>10</sup> See *RCA Comments* at 15 ("When the *Interim Cap Order* rule was adopted, the Commission did not contemplate that any amount of CETC high-cost fund would be 'removed' or that any funds would be 'free[d] up' to disburse to any CETC."); *Cellcom Comments* at 5 (same); see also *Cellcom Comments* at 3 (neither the Act nor the Commission's rules "address the situation where a CETC agrees to phase out its high-cost support"). In any event, Verizon Wireless is not "exiting" the program as a CETC but is having its CETC support reduced over time. Again, the *Interim Cap Order* does not support Corr's claim.

<sup>11</sup> *Merger Order*, 23 FCC Rcd at 17531-32, para. 196.

<sup>12</sup> See, e.g., *SouthernLinc Comments* at 8-9; *USA Coalition Comments* at 5.

phase down its competitive ETC high cost support over five years, as discussed herein.”<sup>13</sup> The only discussion of this commitment is in the preceding paragraph, in which the Commission quotes nearly verbatim Verizon Wireless’s commitment letter.<sup>14</sup> If Corr and its supporters were correct, and the Commission did not adopt the terms of Verizon Wireless’s letter, then the merger condition is limited to “Verizon Wireless’s commitment to phase down its competitive ETC high cost support over five years,” such that Verizon Wireless could structure the phase down in any manner it chooses. It could, for example, defer implementation of the merger condition until a year after the merger closed, or reduce its high cost support by five percent in each of the first four years and defer the remaining 80 percent reduction to the fifth year, because the effective date of the merger condition and the schedule for the reductions in high cost support are discussed only where the Commission “paraphrases” Verizon Wireless’s letter. Corr and its supporters notably do not suggest this result, but it is the logical import of the argument that the Commission did not adopt the voluntary commitment as described in Verizon Wireless’s letter and quoted in the *Merger Order*.<sup>15</sup>

Third, some of the same carriers that now contend they are entitled to share the high cost funds foregone by Verizon Wireless previously advocated denying Verizon Wireless all of Alltel’s high cost funding because it would reduce the size of the high cost fund. Of course, redistributing the support from Verizon Wireless to other carriers now would undermine the same goal they professed to support. The Rural Telecommunications Group supports Corr’s appeal and now claims that “[m]ost competitive ETCs . . . including RTG members, expected

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<sup>13</sup> *Merger Order*, 23 FCC Rcd at 17532, para. 197.

<sup>14</sup> *Id.* at para. 196.

<sup>15</sup> Equally silly is the suggestion that the terms of the commitment letter are not relevant because the letter is quoted in the “Record” subsection, as opposed to the “Discussion” subsection of the *Merger Order*. *SouthernLinc Comments* at 9 n.23.

that Alltel's support would be 'freed up' and redistributed" to other CETCs.<sup>16</sup> Last August, however, RTG argued that withdrawing Alltel's high cost funding "would dramatically reduce pressure on the high-cost fund and would benefit consumers of interstate and international telecommunications," a view shared by others.<sup>17</sup> In accepting Verizon Wireless's voluntary commitment, there is no doubt that the Commission intended to advance its goal, articulated in the *Interim Cap Order*, of controlling the growth of the high-cost fund, a result that would not be achieved by depositing the funds in the pockets of Verizon Wireless's (and Sprint's) competitors.<sup>18</sup> RTG wants to have it both ways. Before it supported reducing the fund, while now it advocates action that would not reduce the fund. RTG's members have belatedly arrived at the self-serving -- and clearly erroneous -- interpretation of the *Merger Order* they now espouse in hopes of reaping a windfall for themselves.

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<sup>16</sup> Comments of the Rural Telecommunications Group, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 2-3 (filed May 11, 2009).

<sup>17</sup> See *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, Petition to Deny of the Rural Telecommunications Group, Inc., at 25 (filed Aug. 11, 2008); *id.*, Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group, Inc., at 18 (filed Aug. 26, 2008) (Alltel's high cost support should not flow to Verizon when the high cost fund is in jeopardy). See also *id.*, Petition to Deny of Palmetto Mobilenet, L.P., at 26 (filed Aug. 11, 2008) ("denying such support to Verizon would dramatically reduce pressure on the high-cost fund"); Petition to Deny of the National Telecommunications Cooperative Association, at 7-8 (conditioning merger on Verizon Wireless foregoing Alltel's high cost support "would save the fund \$320 million annually, benefiting the public and helping to stabilize the fund").

<sup>18</sup> See *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer of Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17612, para. 108 (2008) ("The issue concerns the growth of the high-cost fund. Based on our view that it would be beneficial to control the growth of the high-cost fund, we condition our approval of the transaction on Sprint Nextel's compliance with its voluntary commitment to phase out its pursuit of universal service high cost support over the next five years. . . ."); *Merger Order*, 23 FCC Rcd 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").

## **II. CORR'S REQUEST FOR REVIEW IS AN UNTIMELY ATTACK ON BOTH THE INTERIM CAP ORDER AND THE MERGER ORDER**

As Verizon Wireless explained in its opposition comments, what Corr and its supporters really seek is relief from the effects of the *Interim Cap Order*.<sup>19</sup> They complain at length about the “arbitrary,” “devastating,” “deleterious,” and “inequitable” effects of the cap,<sup>20</sup> and explain that reversal of USAC’s decision is part of “a necessary process in the Commission’s . . . reconsideration of the entire inequitable approach to USF distribution set forth in the *Interim Cap Order*.”<sup>21</sup> But Corr failed to seek reconsideration of that order,<sup>22</sup> and it now seizes on USAC’s correct application of the *Merger Order* to mount an invalid and untimely attack on the latter order.

This challenge is ill-conceived in at least three respects. First, the merger condition inflicts no harm on other CETCs. But for adoption of this condition, the high cost funds at issue would be disbursed to Verizon Wireless (and Sprint), not to Corr or other CETCs. Second, for this same reason it is nonsense to suggest that other CETCs were somehow “entitled” to these funds under the *Interim Cap Order*.<sup>23</sup> Indeed, it is the merger conditions that grant other CETCs a competitive advantage with respect to Verizon Wireless and Sprint, both of which must compete head to head with wireless carriers that continue to receive high cost support. Finally,

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<sup>19</sup> Opposition of Verizon Wireless at 7-8.

<sup>20</sup> See, e.g., *RTG Comments* at 2, 4; Comments of Pine Belt Cellular, Inc., CC Docket No. 96-45, WC Docket No. 05-337, at 5 (filed May 11, 2009) (*Pine Belt Comments*).

<sup>21</sup> *Pine Belt Comments* at 4-5.

<sup>22</sup> RCA and others filed a petition for review of the *Interim Cap Order*. That appeal is pending before the Court of Appeals for the District of Columbia Circuit.

<sup>23</sup> See, e.g., *Cellcom Comments* at 5-6; *RCA Comments* at 16.

to the extent that parties wish to challenge the lawfulness of the *Merger Order*,<sup>24</sup> the appropriate remedy was to seek reconsideration of the order, not to challenge USAC's implementation of it. Given the statements in that order that funding disclaimed by Verizon Wireless would not be re-allocated to other CETCs, these parties should have, but failed to, seek reconsideration of the Commission's decision to remove these funds from the pool of money available to CETCs. This collateral attack on the order in the guise of an "appeal" of USAC's implementation of it should be denied.

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<sup>24</sup> See, e.g., *RCA Comments* at 10-17.



## CERTIFICATE OF SERVICE

I, Sarah Trosch, herby certify that on May 26, 2009, a true and correct copy of the foregoing "Reply Comments of Verizon Wireless" was served by first-class U.S. mail, postage prepaid, on the parties listed below:

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In addition, a true and correct copy of the foregoing "Reply Comments of Verizon Wireless" was sent via e-mail to the parties listed below:

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