

**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

REPLY COMMENTS OF THE USA COALITION

The Universal Service for America Coalition (“USA Coalition”),¹ by its attorneys, hereby submits these reply 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”).² The USA Coalition offers these Reply Comments in response to the skewed version of the record and the law provided in the Oppositions filed by Verizon Wireless and Sprint Nextel.³

I. THE RECORD SUPPORTS GRANT OF THE CORR PETITION

The comments filed in response to the Corr Petition overwhelmingly favored Corr’s reading of the *Interim Cap Order*.⁴ Indeed, only two parties filed comments in opposition to the Corr Petition: Verizon Wireless and Sprint Nextel. Both carriers voluntarily chose to forgo USF support throughout their service area as a means of securing approval for the mergers the two companies sought approval for in 2008, apparently based upon their understanding that

¹ The members of the USA Coalition include Carolina West Wireless, MTPCS, LLC d/b/a Cellular One, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, and Thumb Cellular LLC.

² 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).

³ Opposition of Verizon Wireless (filed May 11, 2009); Opposition of Sprint Nextel Corp. (filed May 11, 2009).

⁴ See, generally, Verizon/Alltel Management Trust Comments; Rural Telecommunications Group, Inc. Comments; SouthernLINC Wireless Comments; Pine Belt Cellular Comments; Rural Cellular Association Comments; The Cellcom Companies Comments.

the Commission was planning to phase out support for all competitive eligible telecommunications carriers (“ETCs”) in a USF reform order to be released in November 2008.⁵ However, such an order was never released, and now the two carriers seek to have their respective merger approval orders read in a manner that would deny additional USF support to their competitors.⁶ Regardless of the motive, the position they articulate is nonsensical and procedurally impermissible.

Nothing in either Opposition provides support for Verizon Wireless’ and Sprint Nextel’s argument that the *Verizon-Alltel Merger Order* modified the clear terms of the *Interim Cap Order*.⁷ Verizon Wireless’ Opposition relies upon a theory that the Commission adopted the entirety of a densely packed, two page *ex parte* letter (and thereby materially altered the *Interim Cap Order*, adopted in an entirely separate proceeding) with a single sentence describing Verizon’s “understanding” as to how the disclaimed USF funds would be distributed and a vague reference to accepting “Verizon Wireless’ commitment to phase down support, as discussed herein.”⁸ However, as the Verizon/Alltel Management Trust points out, “Verizon’s statement

⁵ 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 Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258, ¶ 196 (rel. Nov. 10, 2008) (*Verizon-Alltel Merger Order*) (approving the merger of Verizon Wireless and Alltel); *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*) (approving the merger of Sprint Nextel and Clearwire).

⁶ See Verizon Wireless Comments at 5 (“Verizon Wireless would not have agreed to forego high cost funding if that funding were then made available to its competitors”); Sprint Nextel Comments at 3 (claiming that under Corr’s reading, Sprint and Verizon would be “doubly harmed, first by the absolute dollar loss in their support, and second from a deterioration in their competitive position vis-à-vis other CETCs”).

⁷ As the USA Coalition made clear in its initial comments, similar arguments also apply to the USAC’s handling of nearly identical provisions in the *Sprint Nextel-Clearwire Merger Order*. Should the Commission grant the Corr Petition, it should also instruct USAC to interpret the *Sprint Nextel Merger Order* in a similar manner.

⁸ Verizon Wireless Opposition at 3.

about its understanding cannot properly be the basis for the Administrator to conclude that the Commission determined that the Interim Cap amounts should be reduced.”⁹ Indeed, “[i]f the Commission had intended to enact a major change in its official Interim Cap formula, it should (and undoubtedly would) have stated clearly that it intended such a change, and it likely would have first followed proper administrative process within the context of the *Interim Cap Order* proceeding.”¹⁰ At a minimum, the Commission would have provided notice and opportunity to comment, question, and contribute to the discussion of the Commission prior to taking this action, as Pine Belt Wireless noted in its comments.¹¹

The USA Coalition also agrees with RCA that in the *Interim Cap Order*, “the Commission clearly intended that the amount of CETC high cost support that would be available would be fixed at the then-current funding level without reduction.”¹² As RCA further explains, the Commission did not contemplate that the per-line high-cost support to any competitive ETC in any state would be reduced unless the number of lines served by CETC in the state *increased*.¹³ Indeed, there is no justification for reduction of support based on a carrier ceasing to function as an ETC. Rather, as SouthernLINC Wireless points out, “the number of ETCs in a given state is only relevant to the extent it increases or decreases the state uncapped support

⁹ Verizon/Alltel Management Trust Comments at 4 (emphasis in original).

¹⁰ Verizon/Alltel Management Trust Comments at 4; see also RTG Comments (“USAC is incorrect to use the unrelated merger Order to modify the *Interim Cap Order*. The two Orders are under separate FCC docket numbers, are separate proceedings, and even if they were related, there was no notice and comment on how the [Verizon-Alltel] merger should affect the Cap.”).

¹¹ Pine Belt Wireless at 3 (“Review of the procedural history of this matter demonstrates that the affected parties, such as Pine Belt..., had no notice, no opportunity to comment, question, or contribute to the discussion of the Commission or USAC in deciding to take this action.”).

¹² RCA Comments at 15.

¹³ *Id.*

amount and thus the percentage of their reimbursable costs that the competitive ETCs within the state will be reimbursed.”¹⁴

II. THE CHARACTERIZATION OF THE PURPOSE AND OPERATION OF THE CAP BY VERIZON WIRELESS IS INACCURATE

Verizon argues that Corr is not harmed by Verizon’s preferred reading of the *Verizon-Alltel Merger Order* because “[Corr] 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.”¹⁵ This is demonstrably false, both with respect to Corr and with respect to all other carriers. First, as a policy matter, the interim cap was adopted because of the Commission’s belief that “the rapid growth in high-cost support place[d] the federal universal service fund in dire jeopardy.”¹⁶ It did not reflect a Commission finding that the amount of support competitive ETCs were receiving under the identical support rule was excessive or inappropriate.¹⁷ As such, even under the *Interim Cap Order*, Corr and the other competitive ETCs are actually entitled to the full amount of support that should be provided under the identical support rule – the Commission simply determined that in the short term it was infeasible to continue providing that level of support, and adopted the interim cap as a means of protecting the viability of the fund.

¹⁴ SouthernLINC Wireless Comments at 7.

¹⁵ Verizon Wireless Opposition at 8; *see also* Sprint Nextel Opposition at 4 (“CETCs other than Sprint and Verizon/Alltel are not harmed by removal from the interim cap of the support disclaimed ... [because] CETCs do not receive any less support than they would otherwise receive if the phase-out requirements had never been imposed.”).

¹⁶ *Interim Cap Order* ¶ 6. The USA Coalition disputes this finding, but that dispute is not relevant to the Corr Petition.

¹⁷ *Interim Cap Order* ¶ 9 (“We do not today make a final determination regarding the level of support to competitive ETCs that is sufficient, but not excessive, for achieve the Act’s universal service goals.”). Rather, the Commission took the “interim step of capping annual competitive ETC support ... [to] provide a necessary constraint on the growth of support until comprehensive reform is adopted.” *Id.*

By agreeing to forego support, Verizon Wireless and Sprint Nextel essentially freed up support that should be used to support competitive ETCs in the affected regions at levels closer to those they should be at under current Commission rules (*i.e.*, the identical support rule). As such, this does not represent a windfall to the other competitive ETCs, but rather a return (or at least a move towards) the previous status quo. Verizon’s challenge to Corr to explain how an “unjustified windfall” (by which Verizon means competitive ETC receiving almost all of the support that they are *supposed* to receive under Commission precedent) “advance[s] the policy of objective of halting the growth of the high cost fund that led the Commission to adopt the *Interim Cap Order*” thus mischaracterizes the goal of the *Interim Cap Order*.¹⁸ The *Interim Cap Order* by its very terms ensures that competitive ETC funding is frozen (*i.e.*, “halted”) at March 2008 levels. What Verizon Wireless’ reading of the *Verizon-Alltel Merger Order* would do is *reduce* competitive ETC funding – a result not anticipated in the *Interim Cap Order*, not appropriate to an order adopted in merger proceeding (as discussed above), and on which the Commission failed to provide adequate opportunity for notice and comment.

¹⁸ Verizon Wireless Opposition at 7. *See also* Sprint Nextel Opposition at 3 (“[G]rant of Corr’s demand would obviate the sole public policy benefit cited by the Commission in requiring the phase-outs – controlling high-cost USF disbursements to CETCs.”).

CONCLUSION

For the reasons set forth above, the USA Coalition urges the Commission to reverse USAC's decision to exclude USF support disclaimed by Alltel and Verizon Wireless (and, similarly, Sprint Nextel) 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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