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May 7, 2010

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: *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*
WT Docket No. 08-95
File Nos. 0003463892 *et al.*, ITC-T/C-20080613-00270 *et al.*

*Applications of Sprint Nextel Corp. and Clearwire Corp. for
Consent to Transfer Control of Licenses, Leases, and
Authorizations*
WT Docket No. 08-94
File Nos. 0003462549 *et al.*

*Appeal of USAC Decision by Corr Wireless
Communications, LLC*
CC Docket No. 96-45
WC Docket No. 05-337

Madam Secretary:

On behalf of the Alliance of Rural CMRS Carriers¹ (“ARC”) we write to urge the Commission to issue an order adopting lawful, competitively neutral solutions to several critical outstanding items flowing from the recent mergers involving Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Sprint Nextel Corp. (“Sprint”).

¹ The carriers participating in this filing are: NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Cellular South, Inc., Smith Bagley, Inc., and MTPCS, LLC d/b/a Cellular One.

ARC is concerned that the process regarding the implementation of the voluntary commitments by Verizon Wireless and Sprint to phase down their high-cost support over a five-year period as a condition of their respective mergers has not been conducted with sufficient transparency to apprise interested parties of the Commission's deliberations on the subject.² Upcoming decisions on the phase-down of Verizon Wireless and Sprint have enormous consequences for consumers in rural areas who need improved access to advanced telecommunications and information services, as support to competitive eligible telecommunications carriers ("CETCs") is being reduced as a result of the delay in implementing the phase-downs.

ARC requests that the Commission take several measures outlined below:

- Grant the Corr Wireless request for review and instruct USAC to make the phase-down amounts available to other CETCs under the Interim Cap as needed. ARC estimates that at least half of the phase-down amounts will be available for other purposes and will not be needed for "redistribution" to other CETCs;
- Implement the phase-down in the areas Verizon Wireless is required to divest up until such time as they are actually divested;
- Calculate the phase-downs proceeding from the capped support Sprint and Verizon Wireless were paid as of the effective dates of their respective mergers; and
- Treat Verizon Wireless' relinquishment of ETC status in several states as separate from the phase-down, so that the phase-down is calculated independently of the support forgone through relinquishment.

As explained herein, these measures will ensure that the phase-downs are implemented in a competitively neutral manner and consistent with the merger orders. They will also make ample support available to be repurposed for other uses, including the Commission's broadband initiatives.

² See, e.g., Reply Comments of Rural Cellular Association, filed in WC Docket Nos. 05-337, 06-122 and CC Docket No. 96-45 (Feb. 16, 2010) at p. 4; letter from Caressa D. Bennett, Counsel for the Rural Telecommunications Group, to Marlene H. Dortch, Secretary of the Federal Communications Commission, filed in WT Docket No. 08-95, CC Docket No. 96-45, and WC Docket No. 05-337 (Oct. 29, 2009); letter from Phyllis A. Whitten, Counsel to Hayneville Fiber Transport, Inc. d/b/a Camellia Communications, to Marlene H. Dortch, filed in CC Docket No. 96-45, WC Docket No. 05-337, WC Docket No 06-122, WT Docket No. 08-95 and WT Docket No. 09-104 (Nov. 24, 2009).

I. The Commission Should Reverse USAC's Unauthorized Decision to Shrink the Interim Cap.

ARC supports the request by Corr Wireless Communications, LLC ("Corr Wireless") for Commission review of the decision by USAC to prevent the Verizon Wireless and Sprint phase-downs from creating "head room" under the Interim Cap for other CETCs. Essentially, USAC made an unauthorized policy decision to shrink the Interim Cap by the amount of the phase-down, contravening the FCC's decision to fix the Interim Cap at the total amount of support for which CETCs were eligible as of March 2008.

Without question, USAC exceeded the authority set forth in its charter by making a legal interpretation of the *Interim Cap Order*.³ Moreover, USAC's decision directly contradicts the *Interim Cap Order* and is not supported by the Verizon Wireless and Sprint merger orders. USAC inexplicably adopted the "understanding" expressed by Verizon Wireless,⁴ which understanding was never acknowledged, much less adopted by the Commission.⁵

Modifying USAC's decision as urged by Corr Wireless would not in any way complicate USAC's job of administering the USF and implementing the Interim Cap, nor would it be administratively burdensome. When it prepares high-cost support disbursements each month, USAC recalculates the cap for all states in all previous months under the cap period in response to revised CETC line count filings, revised ILEC cost filings, and previous erroneous payouts. Granting Corr Wireless' appeal would require USAC to recalculate the Interim Cap in the phase-down states going back to early 2009 and make corresponding CETC support adjustments. But this is a process that is already undertaken each month, and these calculations would be achieved as part of USAC's existing procedures.

Under Section 54.724 of the Commission's rules, the Wireline Competition Bureau must act within 90 days of a request for review of a USAC decision that is properly before it. More than a year has passed since Corr Wireless filed its appeal, and ARC is not aware of any Commission decision to extend the 90-day period for review.

³ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd. 8834 (2008) ("*Interim Cap Order*"), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

⁴ See Letter from John T. Scott, III to Marlene H. Dortch, WT Docket No. 08-95 (Nov. 3, 2008).

⁵ The Commission did not address or confirm VZW's "understanding" that the high-cost support it declines would not increase the support disbursed to other CETCs. See *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444, 17532 (2008) ("*Verizon/ALLTEL Merger Order*"). Nor did the Commission state that the phase down of VZW/ALLTEL's high-cost support would alter the calculation of the state-specific reduction factor under the *Interim Cap Order*.

Every day this matter continues without a decision is a day rural consumers are unfairly denied the benefits of universal service support intended for high-cost areas. Each ARC member uses federal high-cost support to build network infrastructure in rural and high-cost areas. Any additional support provided as a result of the Corr Wireless decision will restore appropriate levels of investment in each ARC member service area. A decision is long overdue in this matter, and ARC urges the Commission to take action.

II. The FCC Should Direct USAC to Phase Down All of Verizon Wireless' Support in the Divestiture Areas Until They Are Actually Divested.

In its order approving the Verizon Wireless-ALLTEL merger, the FCC referenced a commitment by Verizon Wireless “to accept a phase down of competitive [ETC] high cost support, *for any properties which Verizon Wireless retains*, over a five year period following closing of the transaction.”⁶ In adopting that commitment, the FCC held that Verizon Wireless’ high-cost support would be phased down in the following manner:

- 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 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 competitive ETC high cost support would be phased out five years after the closing of the transaction.

As another condition for approving the merger, Verizon Wireless agreed to divest itself of 105 markets across the country. On April 20, 2010, the Commission approved the transfer of 26 of these markets.⁷ The remaining markets are the subject of an application for transfer and assignment that is currently pending before the Commission.⁸ Meanwhile, those properties are being retained by Verizon Wireless and managed by the Verizon/ALLTEL Management Trust. Even though Verizon Wireless still retains the divestiture areas, USAC has granted new Study Area Codes (“SACs”) to enable Verizon Wireless to split out its line counts.

⁶ *Verizon/ALLTEL Merger Order*, 23 FCC Rcd at 17531 (para. 196) (emphasis added).

⁷ *See Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless*, WT Docket No. 09-119, Memorandum Opinion and Order, DA 10-661 (WCB, IB rel. Apr. 20, 2010).

⁸ *See Public Notice, AT&T and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, DA 09-1350 (WTB rel. Jun 19, 2009).

In turn, Verizon Wireless has re-filed several calendar quarters' worth of filings dating back to the first quarter of 2009. USAC has apparently processed all of these retroactive filings, and a confusing array of positive and negative adjustments to the "new" and "old" SACs has ensued.

It is unclear why new SACs were granted for areas that had not yet been divested. It makes even less sense that Verizon Wireless would need to file separate line counts under those SACs going all the way back to January 2009. As adopted in the *Verizon/ALLTEL Merger Order*, the phase-down applies to "any properties that Verizon Wireless retains."

Pursuant to the plain language of the *Verizon/ALLTEL Merger Order*, the divestiture areas must be subject to the phase-down provisions until Verizon Wireless no longer "retains" them. Accordingly, the Commission should direct USAC to make all adjustments necessary to implement the 20% annual phase-down of support in all such areas effective as of December 31, 2008.

III. Support for Verizon Wireless and Sprint Should *Not* Be Permitted to "Float" Above the Amounts They Were Eligible to Receive on the Dates on Which Their Transactions Closed.

Regardless of how it rules on the Corr Wireless appeal, the Commission should ensure that the phase-down is implemented in an even-handed and administratively workable manner. This means that Verizon Wireless should have the phase-down calculated on a state-by-state basis from the amount of capped support they received as of December 31, 2008, the merger effective date.⁹

Suppose, for example, Verizon Wireless received \$10 million per year in capped support in Kansas on December 31, 2008. Under the phase-down provisions of the merger order, Verizon Wireless should receive \$8 million in 2009, \$6 million in 2010, \$4 million in 2011, \$2 million in 2012, and zero from 2013 onward.

Verizon Wireless itself has advocated this approach in filings before at least one state commission.¹⁰ However, it appears USAC is planning to allow Verizon Wireless'

⁹ See Petition for Reconsideration or Clarification filed by United States Cellular Corp., Carolina West Wireless, Inc., and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless in WT Docket No. 08-95 (Dec. 10, 2008).

¹⁰ See, e.g., Affidavit of ALLTEL Communications, LLC Regarding Use of Federal High-Cost Support Funds (filed with Wisconsin PSC Aug. 28, 2009) ("The FCC Order approving Verizon [sic] Wireless' acquisition of Alltel requires a phase down of high cost support for any properties that Verizon Wireless retains over a five-year period following the closing of the transaction. . . . Therefore, ALLTEL will use twelve times the January 2009 payment less 20% to develop the anticipated receipts from the universal service fund for calendar year 2009.")

support to float upwards with its line counts, and to apply the phase-down to the increased levels. In fact, USAC's projections show increases in Verizon Wireless' pre-cap support above its pre-cap levels as of December 31, 2008. The CETC cap is calculated based on those increased amounts.¹¹ Only then is the phase-down applied.¹²

Phasing support down from a flat amount in each state as of the merger effective date is the only logical and administratively workable approach to implementing the phase-down provisions of the merger orders. The reduction would be easy to calculate as USAC would simply take the capped Verizon Wireless or Sprint support within a state as of the merger effective date, and reduce it by 20% the first year. In the first disbursement of the second year, USAC would take the same capped support as of the merger effective date, and reduce it by 40%. And so on until it reaches zero in the fifth year. Because the pre-phase down support would be fixed, the reduction would only need to be calculated once per year.

Allowing the support for Verizon Wireless and Sprint to float upwards before applying the phase-down each year would be inconsistent with the merger orders, which require that the phase-down consist of equal increments of 20%. This requires a fixed number from which to start. Indeed, allowing the support to float upwards would be illogical, since a 20% annual phase-down of a steadily increasing number would never reach zero.

It is precisely because Sprint's and Verizon Wireless' support has been allowed to float upwards that CETCs have received such severe cap reductions recently. For example, in Wisconsin, Verizon Wireless-affiliated entities receive over \$1 million more *per month* than they were projected to receive in the fourth quarter of 2008. As a result, all CETCs in Wisconsin have had their support cut by roughly 20%. If the Verizon Wireless entities received the same support levels they received on December 31, 2008, CETCs in Wisconsin would be faced only with a 10% cap reduction – even if the Corr Wireless appeal is denied.

Under the approach recommended herein, the impact of the phase-down on support to other CETCs under the Interim Cap would depend on whether the Commission grants or denies the Corr Wireless request for review. In either case, the cap would be simple to administer:

¹¹ See USAC Second Quarter 2010 High Cost Appendices HC01 and HC01A at <http://www.usac.org/about/governance/fcc-filings/2010/quarter-2.aspx>.

¹² See Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2010 (USAC Jan. 29, 2010) at p. 14 (explaining that after the high-cost support projections are calculated, they are subjected to various adjustments, including a decrease to reflect the phase-down of support to Verizon Wireless and Sprint).

- If Corr Wireless' request is denied, then the statewide cap would be calculated using the frozen Verizon Wireless and Sprint amounts *before* the phase-down is applied. In other words, USAC would start with a pre-cap statewide CETC total that includes Verizon Wireless or Sprint support frozen as of their merger effective date. Then, Verizon Wireless or Sprint would receive its frozen, capped amount with a 20% reduction the first year, 40% the second year, etc.
- If Corr Wireless' request is granted, then the statewide cap would be calculated *after* the phase-down is applied to the frozen uncapped amounts. USAC would start by phasing down the amount of Verizon Wireless or Sprint support frozen as of their merger effective date. This phased-down amount would then be used in calculating the statewide CETC total for the cap calculation.

In sum, phasing down the Verizon Wireless and Sprint support, based on amounts frozen as of the merger effective date, is eminently simple, whichever way the Corr Wireless appeal is resolved. Continued inaction will only exacerbate the unjustified losses of support experienced by ARC's members and other CETCs around the country.

IV. Support Lost Through Relinquishment Should *Not* Count Toward the 20% Annual Phase-Down.

Since their merger was approved, the former ALLTEL entities now controlled by Verizon Wireless have relinquished their ETC designations in several states, including Oregon, Maine, Vermont and New Hampshire. Consequently, Verizon Wireless now faces reduced regulatory obligations in those states.

The support forgone by Verizon Wireless by withdrawing as an ETC should *not* be counted as part of the 20% phase-down. Relinquishment was not discussed in the order as a permissible means of reducing support. Indeed, the order expressly stated that support to Verizon Wireless would be reduced "in equal increments[.]"¹³ Support cannot be reduced in equal increments by withdrawing as an ETC in selected states. Instead, as argued in Section III above, the phase-down must be accomplished state-by-state, using a frozen support amount as of the merger effective date.

V. Implementing the Support Phase-Down as Set Forth Above Will Free Up Substantial Support for the National Broadband Plan.

There have been misleading assertions that a grant of the Corr Wireless appeal would result in all of the phase-down amounts being "redistributed" to other CETCs. On the contrary, only around half of the phase-down amounts will go to other CETCs. The

¹³ *Verizon/ALLTEL Merger Order, supra*, 23 FCC Rcd at 17531 (para. 196).

remainder – that is, the phase-down amounts left over after providing the necessary headroom in the states that need it – will go back into the USF.

Based on ARC's review of USAC data, and assuming a conservatively high estimate of 13% annual growth in CETC lines nationwide, only 55% of the phase-down amounts would be needed to eliminate cap reductions in various states. Because the rate of growth in CETC support is likely to be substantially lower¹⁴ -- and because Verizon Wireless and Sprint will be required to return all of the funding they have received in excess of the level of support they received as of their respective merger effective dates -- it is likely that less than 50% of the support relinquished by Verizon Wireless and Sprint would be needed by other CETCs to avoid cap reductions. The remaining 50% (or more, presumably) would be available for other uses, including the Commission's broadband initiatives. This means that of the approximately \$2 billion in Verizon Wireless and Sprint support to be phased down over five years, more than \$1 billion would be returned to the USF, not to other CETCs.

In addition, if the Commission properly applies the phase-down to all Verizon Wireless properties prior to their actual divestiture, millions of dollars in additional support will be returned to the USF and made available for other purposes.

The above analysis makes it clear that implementing the phase-downs as requested in this letter would treat competitors fairly and comply with the *Interim Cap Order*, all while serving the Commission's stated objective of shifting support "from the current high-cost program to broadband through commonsense reforms."¹⁵

VI. Conclusion.

In brief, ARC urges the Commission to act promptly to implement the merger phase-downs in a manner that complies with the merger orders, the Interim Cap Order, and the fundamental principle of competitive neutrality. Specifically:

- The Commission should grant Corr Wireless' request for review and apply the phase-down amounts to easing the Interim Cap burden on other carriers. This is how the Interim Cap was designed to work, and it will restore appropriate investment levels in other competitive ETC's networks while making abundant support available for other purposes.

¹⁴ According to USAC projections, total CETC support prior to application of the cap increased roughly 13% between the second quarter of 2009 and the second quarter of 2010. See High-Cost Appendix HC01A for Second Quarter 2009 and Second Quarter 2010 at www.usac.org. Because the rate of growth in CETC support has declined each year, it is reasonable to assume that the rate of growth would average less than 13% per year during the five years in which the phase-downs are implemented.

¹⁵ Broadband Plan at 147 (Recommendation 8.6).

Marlene H. Dortch, Secretary

May 7, 2010

Page 9

- The phase-down of Verizon Wireless' support should be applied to all Verizon Wireless areas, including the 105 divestiture markets up until the date on which they are actually divested.
- The phase-downs for both Sprint and Verizon Wireless should proceed from the capped levels of support the carriers received as of the effective dates of their respective mergers. Any additional support paid since then must be recovered from Sprint and Verizon Wireless, with appropriate compensation to other competitive ETCs that have had support deducted as a result of the excess support to Sprint and Verizon Wireless.
- Support that Verizon Wireless has lost by relinquishing ETC status in several states should not count toward the phase-down, since the merger order requires the phase-down to be implemented in equal 20% increments.

ARC appreciates the Commission's consideration of these issues and respectfully requests that the Commission implement the phase-down as set forth above. If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria
Steven M. Chernoff
Counsel for the Alliance of Rural CMRS Carriers

cc: Hon. Julius Genachowski
Hon. Michael J. Copps
Hon. Robert M. McDowell
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