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*NOT ADMITTED IN VA

July 26, 2010

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 Carriers[1] ("ARC"), we write to respond to the ex parte letter submitted by Verizon Wireless on July 22, 2010, in the above-referenced dockets ("Verizon Wireless Letter").

Verizon Wireless asserts that there is no principled basis for other competitive eligible telecommunications carriers ("CETCs") to receive additional support under the interim cap on CETC high-cost support ("Interim Cap") as a result of the phase-out of support to Verizon Wireless and Sprint. In fact, there are two such principled bases.

[1] The following ARC members are represented in this matter: NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Cellular South, Inc., Smith Bagley, Inc., and MTPCS, LLC d/b/a Cellular One.

First, the plain language of the *Interim Cap Order* provides that each state is capped at a sum certain as of March, 2008, and that capped amount is available to any and all eligible carriers within each state, irrespective whether new carriers are designated or existing carriers relinquish ETC status.[2] Nothing in the *Merger Order*[3] modifies, nor could it modify, the Commission's *Interim Cap Order***,** which is a rulemaking of general applicability. The Verizon Wireless Letter concedes this when it says that its support should be calculated pursuant to the *Interim Cap Order*.

Second, Verizon Wireless and Sprint ***volunteered*** to reduce their support. If one is to believe the *Merger Order*, nobody at the FCC forced Verizon Wireless to volunteer to reduce its support. It took a voluntary action, but now complains that others are not required to volunteer reductions in support, as it did. That is an unprincipled argument.

Verizon Wireless cannot point to a single word within the *Merger Order* in support of its position. Instead it references the separate statement of former Chairman Kevin J. Martin, who wrote that Verizon Wireless' voluntary agreement to phase out its support will reduce pressure on the fund over time. As we have pointed out in our earlier papers, granting the Corr Wireless request for review would reduce pressure on the fund by an estimated $1 billion over five years, while redistributing an estimated $1 billion to other eligible carriers.[4] So the former Chairman's statement, in hindsight, is true on its face, but it does not support Verizon Wireless' new position.

Moreover, a commissioner's separate statement does not form part of an FCC order. Whatever meeting of the minds Verizon Wireless believed that it reached with the former Chairman or his staff only one day prior to Commission approval of the merger, it is not reflected in the relevant portions of the *Merger Order*. Verizon Wireless cannot rely on an alleged *ex parte* agreement with a former Chairman to override the *Interim Cap Order* (adopted pursuant to notice and comment rulemaking) fixing the annual cap amount within each state at

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[2] *High-Cost Universal Support*, 23 FCC Rcd 8834, 8850 (2008) ("*Interim Cap Order*"). As we previously noted, the Commission in this very order designated over 20 new CETCs, many within areas where other CETCs had already been designated, without increasing the amount of support available in each affected state. Likewise, when a carrier relinquishes ETC status, the cap amount is divided among the remaining CETCs.

[3] *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444, 17532 (2008) ("*Merger Order*").

[4] Letter from David A. LaFuria, counsel to ARC, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 08-94, 08-95, CC Docket No. 96-45, WC Docket No. 05-337 (filed May 7, 2010) at p. 8.

"twelve times the level of support that all [CETCs] were eligible to receive in that state for the month of March 2008."[5]

Verizon Wireless also misconstrues the requirement that its support be "phased out in equal increments," potentially leading to absurd results. For example, as we understand the interpretation advanced by Verizon Wireless, it could increase its line counts in Year 2 and, even after taking a 20% reduction, actually end up receiving ***more*** support in Year 2 than in Year 1. That cannot be a result that the Commission intended.

The only way to reduce its support each year in equal 20% increments is to start with the amount of capped support Verizon Wireless received at the start of the five-year period, and to calculate the 20% increments based on that amount each year thereafter. By specifying that the 20% increments must be "equal," the Commission unequivocally required that each of the 20% increments be equal to one another. Verizon Wireless' position allows the possibility of manipulation that was never contemplated.

To reiterate ARC's position made in previous correspondence, faithful adherence to both the *Merger Order* and the *Interim Cap Order* requires the Commission to implement the phase-down as follows:

- 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 required. ARC estimates that at least half of the phase-down amounts will be available for other purposes and will not be redistributed 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 receiving 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.

Verizon Wireless' efforts to rewrite the *Merger Order* and the *Interim Cap Order* have no basis and must be disregarded. Verizon Wireless seeks to avoid honoring the significant economic commitment it voluntarily agreed to as a condition of its acquisition of Alltel, and to

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[5] *Interim Cap Order, supra,* 23 FCC at 8850.

contemporaneously reduce the support provided to its competitors. We urge the Commission to reject these efforts.

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,

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