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Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC Mail Room

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
	)	
Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC	)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: August 31, 2010 **Released: September 3, 2010**

Comment Date: 21 days after date of publication in the Federal Register
Reply Comment Date: 14 days after date of publication in the Federal Register

By the Commission: Chairman Genachowski and Commissioner Copps issuing separate statements.

I. INTRODUCTION

1. In this order and notice of proposed rulemaking (NPRM), we undertake important steps for fiscally responsible universal service fund reform. Verizon Wireless and Sprint Nextel, in separate transactions in 2008, each committed to surrender their high-cost universal service support over five years, but those commitments have yet to be implemented.[1] Corr Wireless Communications, LLC (Corr Wireless) has asked that any support reclaimed from Verizon Wireless and Sprint Nextel be redistributed to other competitive eligible telecommunications carriers (ETCs).[2] In this order we (a) provide clear instructions for implementing Verizon Wireless's and Sprint Nextel's commitments; (b) hold that the

[1] *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 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) (*Verizon Wireless Merger Order*); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008) (*Sprint Nextel Merger Order*). For purposes of this order, "Verizon Wireless" refers to Cellco Partnership d/b/a Verizon Wireless, as well as any subsidiaries or affiliates subject to the universal service commitments of the *Verizon Wireless Merger Order*. It does not refer to service territories divested by Verizon Wireless pursuant to the *Verizon Wireless Merger Order*. Similarly, "Sprint Nextel" refers to Sprint Nextel Corporation, as well as any subsidiaries or affiliates subject to the universal service commitments of the *Sprint Nextel Merger Order*.

[2] *See* Request for Review By Corr Wireless Communications, LLC of Decision of Universal Service Administrator, CC Docket No. 96-45, WC Docket No. 05-337 (filed Mar. 11, 2009) (Corr Wireless Request for Review). To be eligible to receive high-cost universal service support, a carrier must be designated an "eligible telecommunications carrier" (ETC) for a specific service territory by the relevant state regulator or the Commission. Wireless carriers (such as Verizon Wireless and Sprint Nextel) are known as "competitive ETCs," while incumbent local exchange carriers are known as "ETCs."

surrendered support need not be redistributed to other competitive ETCs in all cases; and (c) direct that the surrendered support be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the National Broadband Plan, including to index the E-rate funding cap to inflation to enhance broadband opportunities for children, teachers, schools, and libraries; support a Mobility Fund to provide wireless broadband service in areas that lack coverage; improve utilization of the Rural Health Care program to advance telemedicine in rural areas across the country, including Tribal lands; and, in the long term, directly support broadband Internet services for all Americans.[3] In addition to accelerating universal access to broadband, this approach to implementing Verizon Wireless's and Sprint Nextel's commitments also reduces payments that support potentially duplicative legacy voice services and stabilizes consumer contributions to the universal service fund.

2. In the NPRM that accompanies this order, we seek comment on permanently amending our rules to facilitate efficient use of reclaimed excess high-cost support. In addition, we seek comment on a proposal to modify our rules to reclaim legacy support surrendered by a competitive ETC when it relinquishes ETC status in a particular state.

II. BACKGROUND

3. In the May 1, 2008 *Interim Cap Order*, the Commission adopted a cap on high-cost universal service support for competitive ETCs. Such support had been growing rapidly over the preceding years, increasing the universal service contribution burden on consumers.[4] Specifically, the Commission capped total annual competitive ETC support for each state at the level of support that competitive ETCs in the state were eligible to receive during March 2008, on an annualized basis.[5] Under the interim cap, the Universal Service Administrative Company (USAC)[6] continues to calculate support for competitive ETCs using the Commission's existing identical support rule, which enables a competitive ETC to receive the same per-line support amount received by the incumbent carrier in its service area.[7] If, however, the total support calculated for competitive ETCs in a state exceeds the interim cap amount for that state, USAC proportionally reduces the support for each competitive ETC serving the state.[8] In the event that additional competitive ETCs are designated in a state, the *Interim Cap Order* provides that their support also counts toward the interim cap amount for that state, and the cap amount will not be increased to reflect the new competitive ETCs' high-cost support demands.[9]

4. In the *Verizon Wireless Merger Order*, released November 4, 2008, the Commission approved, with conditions, the transfer of control of licenses and other authorizations held by subsidiaries

[3] Federal Communications Commission, *Connecting America: The National Broadband Plan*, 145-46, 215-16, 238 (rel. March 16, 2010) (*National Broadband Plan*).

[4] *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, 8837-50, paras. 6-39 (2008) (*Interim Cap Order*).

[5] *Id.* at 8846, para. 26.

[6] USAC is a public non-profit corporation established by the Commission for the purpose of administering universal service programs. It collects contributions to the universal service fund and distributes universal service support in accordance with the Commission's rules and under the Commission's oversight.

[7] *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 27-28; *see also* 47 C.F.R. §§ 54.307 (portability of support to competitive ETCs), 54.807 (calculation of Interstate Access Support for competitive ETCs), 54.901(b) (calculation of Interstate Common Line Support for competitive ETCs).

[8] *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 27-28.

[9] *Id.* at 8846, 8850, paras. 26, 39.

and partnerships of ALLTEL from Atlantis Holdings LLC to Verizon Wireless.[10] On that same day, in the *Sprint Nextel Merger Order*, the Commission also approved, with conditions, the transfer of control of licenses held by Sprint Nextel Corporation and Clearwire Corporation to New Clearwire Corporation, which is majority owned by Sprint Nextel.[11] Among other things, the Commission conditioned its approval of those transactions on those carriers' voluntary commitments to surrender their high-cost universal service support—estimated as approximately $530 million in 2008[12]—in equal 20 percent increments over a period of five years from the closing date of the transactions.[13] The Commission provided no specific direction regarding how these commitments should be implemented—*i.e.*, how the 20 percent reductions should be calculated and the effect of the reductions, if any, on high-cost payments to other competitive ETCs. The Commission did note, however, Verizon Wireless's stated understanding that the reduction in payments to Verizon Wireless would not result in an increase in high-cost payments to other competitive ETCs.[14]

5. Following the adoption of the merger orders, USAC developed a proposal for implementing the companies' commitments. In a letter dated February 25, 2009, USAC confirmed to Corr Wireless that Verizon Wireless's phased-out support would not be available for redistribution to other competitive ETCs.[15] According to USAC, "all Verizon Wireless and Alltel High Cost support payments subject to the reduction provisions included in the [*Verizon Wireless Merger Order*] are effectively removed from the CETC interim cap and do not 'free up' additional dollars for other CETCs in any jurisdiction."[16]

6. In response, Corr Wireless filed a request for review, asking the Commission to direct USAC to count all support received or formerly received by Verizon Wireless and Alltel in the interim cap amount and make the support available to other competitive ETCs in a manner consistent with the *Interim Cap Order*.[17] Corr Wireless also asked that the same treatment be applied to any other reclaimed or relinquished high-cost universal service support, including any support reclaimed pursuant to the *Sprint Nextel Merger Order*.[18] Corr Wireless noted that the Commission in the *Interim Cap Order* specifically stated that the designation of new competitive ETCs would not affect the size of the interim cap and would only affect how the capped high-cost universal service support would be divided.[19] Corr Wireless argued that "the necessary corollary is that when existing participants leave the pool, the number of participants goes down and each participant's share should go up."[20] Corr Wireless further argued that USAC has taken "an Order applicable solely to two particular entities and used that language to override

[10] *See generally Verizon Wireless Merger Order*, 23 FCC Rcd 17444.

[11] *See generally Sprint Nextel Merger Order*, 23 FCC Rcd 17570.

[12] *National Broadband Plan* at 147.

[13] *Verizon Wireless Merger Order*, 23 FCC Rcd at 17529-32, paras. 192-97; *Sprint Nextel Merger Order*, 23 FCC Rcd at 17611-12, paras. 106-08.

[14] *Verizon Wireless Merger Order*, 23 FCC Rcd at 17531-32, para. 196.

[15] Letter from Karen Majcher, Universal Service Administrative Company, to Donald Evans, Counsel to Corr Wireless (dated Feb. 25, 2009) (attached as an exhibit to the Corr Wireless Request for Review) (USAC February 25 Letter).

[16] *Id.*

[17] Corr Wireless Request for Review at 6.

[18] *Id.*

[19] *Id.* at 4.

[20] *Id.*

the formally adopted policy of the full Commission with respect to the cap formula."[21] On April 9, 2009, the Wireline Competition Bureau sought comment on Corr Wireless's request for review and twelve entities filed comments.[22] Pending further guidance from the Commission on implementation of the merger commitments, USAC has continued to make high-cost universal service disbursements to Verizon Wireless and Sprint Nextel in accordance with the current rules.

III. ORDER

7. In this order, we first grant in part and deny in part Corr Wireless's request that high-cost universal service support reclaimed from Verizon Wireless and Sprint Nextel pursuant to their merger order commitments be made available to other competitive ETCs. As discussed below, we agree with Corr Wireless that USAC cannot modify the interim cap amount by removing Verizon Wireless's and Sprint Nextel's support, but we disagree that all support surrendered or relinquished by Verizon Wireless and Sprint Nextel must necessarily be distributed to other competitive ETCs. We then provide further guidance regarding the implementation of the universal service merger order commitments, particularly with respect to the terms of the *Interim Cap Order*.

A. Corr Wireless Request for Review

8. We agree with Corr Wireless that, to the extent that USAC interpreted the merger order conditions to modify the rules adopted in the *Interim Cap Order*, that interpretation was incorrect. The interim cap is a Commission "rule" pursuant to the Administrative Procedure Act (APA); *i.e.*, it is an "agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy."[23] As such, any amendment or repeal of the interim cap would require a rulemaking proceeding.[24] Because the merger orders in which the Commission approved commitments by Verizon Wireless and Sprint Nextel were adjudicatory-type orders rather than rulemaking proceedings,[25] those orders could not have properly modified the interim cap rule, which was adopted by notice-and-comment rulemaking.[26] Moreover, we find no indication that the Commission intended to modify the interim cap in the merger orders; to the contrary, the Commission stated in those orders that the interim cap would remain in place until the Commission adopts comprehensive high-cost universal service reform.[27]

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[21] *Id.* at 6.

[22] *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, 24 FCC Rcd 4177 (Wireline Comp. Bur. 2009). A list of parties filing comments is contained in Appendix A.

[23] 5 U.S.C. § 551(4).

[24] *See, e.g., Am. Fed'n of Gov't Employees v. FLRA*, 777 F.2d 751, 759 (D.C. Cir. 1985) ("[A]n agency seeking to repeal or modify a legislative rule promulgated by means of notice and comment rulemaking is obligated to undertake similar procedures to accomplish such modification or repeal . . . ."); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 446 (D.C. Cir. 1982) ("[T]he APA expressly contemplates that notice and an opportunity to comment will be provided prior to agency decisions to repeal a rule.").

[25] *See Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1100 (D.C. Cir. 2009) (referring to Commission orders deciding requests from carriers seeking license transfers as "adjudicatory orders" and finding that the orders did not impose any obligations or restrictions on parties other than those directly involved in the mergers).

[26] *See id.* (finding that the *Interim Cap Order* complied with the APA's rulemaking requirements).

[27] *Verizon Wireless Merger Order*, 23 FCC Rcd at 17530; *Sprint Nextel Merger Order*, 23 FCC Rcd at 17611.

9. We find that any implementation of Verizon Wireless's and Sprint Nextel's universal service commitments must be consistent with the interim cap rule, including the size of each state's cap. USAC proposes removing Verizon Wireless's and Sprint Nextel's high-cost universal service support from the interim cap baselines and consequently revising the total support calculated for each state.[28] We agree with Corr Wireless and other commenters that allowing USAC to change the methodology for calculating each state's interim cap amount from the one established in the *Interim Cap Order* would constitute an amendment of the Commission's rules without the opportunity for notice and comment.[29] Sprint Nextel argues that if Verizon Wireless's and Sprint Nextel's support amounts were removed from both the numerator (*i.e.*, the interim cap amount for a state) and the denominator (*i.e.*, the total uncapped support for the state, which would be distributed in the absence of the interim cap) of the ratio that determines the interim cap reduction factor (used to proportionally reduce each competitive ETC's support), other competitive ETCs would be left in substantially the same position as they had been.[30] Even if this assertion were correct, such an action would still amount to an amendment of the interim cap rule without a notice-and-comment rulemaking.[31] Below, in the NPRM that follows this order, we seek comment on amending the interim cap rule so that the cap amount would be adjusted if a competitive ETC relinquishes its ETC status.

10. At the same time, nothing in the *Interim Cap Order* requires the Commission to redistribute to other competitive ETCs the high-cost universal service support reclaimed from Verizon Wireless and Sprint Nextel. As long as they continue to be competitive ETCs in a particular state, Verizon Wireless and Sprint Nextel remain *eligible* for high-cost support, even though they have agreed to surrender such support. And as long as Verizon Wireless and Sprint Nextel remain eligible for a given level of support—regardless of whether they actually receive that support—that support will be included when USAC calculates proportional payments to competitive ETCs under the interim cap. Given our stated goal in the *Interim Cap Order* of reining in high-cost universal service support disbursements, we decline to redistribute the reclaimed high-cost support and conclude that the public interest will be better served by distributing support to other competitive ETCs in the same manner that it would have been distributed in the absence of the merger commitments.

11. Moreover, we note that additional support would not necessarily result in the expansion of service to currently unserved territories. As the D.C. Circuit recognized in its review of the *Interim Cap Order*, the Commission may appropriately balance the need for sufficient support against the need

[28] *See* USAC February 25 Letter.

[29] Corr Wireless Request for Review at 6; *see also* Cellcom Companies Comments at 3-6; Rural Cellular Association Comments at 8-10; Rural Telecommunications Group Comments at 4; SouthernLINC Comments at 7-10; USA Coalition Comments at 3-6.

[30] Sprint Nextel Opposition at 4; Sprint Nextel Reply Comments at 2-3.

[31] In fact, Sprint Nextel's assertion is not correct, as there are scenarios in which competitive ETCs would be worse off if we removed the support that would be due to Sprint Nextel and Verizon Wireless—but for the merger conditions—in calculating the support owed to other competitive ETCs. For example, assume a hypothetical state in which competitive ETCs A and B have identical characteristics and were each eligible for $500,000 in annualized high-cost support as of March 2008, establishing an interim cap for the state of $1 million per year. If provider C, identical to A and B, were later designated as an ETC, under the interim cap rules the reduction factor would be .67 (*i.e.*, $1 million/($500,000 + $500,000 + $500,000)), and B and C would each receive approximately $333,333, even if A surrendered some or all of its support. However, if A's high-cost support is removed from both the interim cap amount and the total uncapped demand for ETC funding as a result of a phase-out commitment, the reduction factor would be .5 (*i.e.*, $500,000/($500,000 + $500,000)) and B and C would receive only $250,000. As a consequence, the removal of A's support from the calculation would reduce B's support by $83,333. Thus, if a new competitive ETC were designated by a state, it would take its share of capped support from all competitive ETCs except Verizon Wireless and Sprint Nextel under Sprint Nextel's proposal.

for a sustainable high-cost support mechanism.[32] Thus, we find that declining to redistribute Verizon Wireless's and Sprint Nextel's surrendered high-cost support strikes an appropriate balance by reining in the high-cost support mechanism without modifying support provided to other competitive ETCs. Therefore, where Verizon Wireless and Sprint Nextel remain ETCs within a state but surrender high-cost universal service support to which they would otherwise be entitled, the surrendered support will not be redistributed to other competitive ETCs in the state as high-cost support. USAC shall make the required support calculations under the identical support rule; apply a reduction factor to all competitive ETCs serving a state, including Verizon Wireless and Sprint Nextel, as required by the interim cap rules; and then apply any Verizon Wireless- or Sprint Nextel-specific reductions, to the extent necessary to effectuate those carriers' merger commitments, via one of the methods described below.[33]

12. On the other hand, we agree with Corr Wireless that if Verizon Wireless or Sprint Nextel complies with its merger commitments by relinquishing its ETC status in one or more service areas, the total amount of support available to competitive ETCs in those areas under the *Interim Cap Order* would remain the same. When a carrier relinquishes its ETC status, it no longer has any claim to support within that service area. It therefore has no support that may be surrendered. As a result, removing from the interim cap amount the support formerly associated with a carrier that has relinquished its ETC status would effectively change the interim cap amount. Because the size of the interim cap amount is set by the *Interim Cap Order*, it cannot be changed except through further notice-and-comment rulemaking. In the NPRM that follows this order, we seek comment on adjusting the interim cap when a carrier has relinquished its ETC status.

13. Finally, we disagree with Verizon Wireless's contention that Corr Wireless's request for review is an untimely collateral attack on the merger orders and the *Interim Cap Order*.[34] Regardless of Verizon Wireless's contention that "[i]t should have been apparent to Corr that the reduced CETC support would not be flowing to it or other carriers," we find that Corr Wireless could not have known the precise mechanics of how USAC planned to implement the merger orders until it was so informed by USAC.[35] Moreover, as described above, it is not necessary for us to reconsider any element of the *Interim Cap Order* or the merger orders to address the issues raised by Corr Wireless.

B. Implementation of the Merger Orders

14. We recognize that the orders did not provide guidance on how Sprint Nextel, Verizon Wireless, and USAC should implement the universal service provisions of the *Verizon Wireless Merger*

[32] *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1102-03 (D. C. Cir. 2009) ("The agency seeks to strike an appropriate balance between the interests of widely dispersed consumers with small stakes and a concentrated interest group seeking to increase its already large stake.").

[33] On May 7, 2010, the Alliance of Rural CMRS Carriers (ARC) filed an *ex parte* letter outlining its proposal for implementing the Verizon Wireless and Sprint Nextel merger conditions. Letter from David LaFuria, Counsel to the Alliance of Rural CMRS Carriers, to Marlene Dortch, FCC, WC Docket No. 05-337 (filed May 7, 2010). We have considered its proposals and, for the reasons described above, find that they are not required by our rules and do not serve the public interest as well as the approach we adopt here. In addition, we reject ARC's argument that the merger cap should apply to service areas that Verizon Wireless has divested consistent with the *Verizon Wireless Merger Order*. The operating entities for these services areas were managed by a trust separate from Verizon Wireless pending their final sale, and all high-cost support they received since the closing of the Verizon Wireless-ALLTEL transaction primarily benefited the trust. Because the service areas have now been divested, depriving these entities of high-cost universal service support would effectively extend Verizon Wireless's merger commitments to the acquiring parties, who were not parties to the merger order commitments.

[34] Verizon Wireless Opposition at 7-8.

[35] *Id.* at 7.

Order and the *Sprint Nextel Merger Order*. Accordingly, we now provide such guidance. We first describe Verizon Wireless's and Sprint Nextel's options for electing a baseline against which to measure the phase-out of their high-cost universal service support. Regardless of the option they choose, implementation of these options will not have an impact on other competitive ETCs. We then provide instruction to USAC regarding the implementation of the additional reductions in a manner that, consistent with our discussion above, does not affect the application of the *Interim Cap Order* to other competitive ETCs that were not parties to the merger orders.

1. Election of a Baseline

15. The merger orders provide that Verizon Wireless and Sprint Nextel have made voluntary commitments to phase out their high-cost universal service support over five years in "equal 20 percent increments."[36] The orders are silent regarding the baseline of support against which the 20 percent increments should be applied, and Verizon Wireless's and Sprint Nextel's total potential high-cost support (in the absence of their merger commitments) will vary over the 2008 to 2013 period. Because the baseline of support is unclear, we find that Verizon Wireless and Sprint Nextel may each choose between two options to determine which baseline shall be used to achieve its respective merger order commitments.[37] Verizon Wireless and Sprint Nextel must each elect an option within 30 days of the release of this order. Whatever election is made will be binding and will apply for the entire five-year phase-down period.

16. Option A: Capped as a Percentage of 2008 or 2009 Support. For Sprint Nextel, the total annual high-cost universal service support the carrier will receive would be capped at no more than 80 percent of its 2008 high-cost support in 2009, 60 percent of its 2008 high-cost support in 2010, 40 percent of its 2008 high-cost support in 2011, 20 percent of its 2008 high-cost support in 2012, and no support in 2013. For Verizon Wireless, the same method will apply but it would use the amount of support the carrier received in January 2009, annualized, as a baseline.[38] USAC will calculate a quarterly cap amount by dividing the annual cap amount by four. USAC then will apply the appropriate carrier-specific reduction factor (having first applied the state-specific reduction factor prescribed by the interim cap rules) to reduce the carrier's quarterly support to its quarterly capped amount.[39]

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[36] *Verizon Wireless Merger Order*, 23 FCC Rcd at 17529-32, paras. 192-97; *Sprint Nextel Merger Order*, 23 FCC Rcd at 17611-12, paras. 106-08. As discussed in a recent order approving AT&T's acquisition of wireless properties divested by Verizon Wireless, the phase-down commitments in the Verizon Wireless Merger Order do not apply to after-acquired properties. *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, FCC 10-116, para. 86, n 282 (rel. June 22, 2010).

[37] The choices we offer Verizon Wireless and Sprint Nextel here are based on the particular circumstances before us and do not bind the Commission in any other context in which a phase-down of high-cost universal service support might occur.

[38] We understand that, due to 2008 divestments by Verizon Wireless and Alltel, it would be administratively difficult to determine the appropriate 2008 baseline amounts for Verizon Wireless. Similarly, we understand that there would be administrative difficulties associated with making Verizon Wireless's voluntary commitments effective in the middle of a month. Verizon Wireless's 20 percent reduction shall therefore be implemented on February 1, 2009 (the first day of the first month following the consummation of the transaction). Verizon Wireless's 40 percent reduction shall be implemented on January 1, 2010, with additional reductions annually thereafter.

[39] This reduction factor will vary depending on how much support Verizon Wireless or Sprint would otherwise receive. Line loss, relinquishment of ETC status, or other circumstances would, by reducing the amount of support for which the carrier is eligible, minimize or eliminate the need for further reductions to meet the cap. For example,

(continued....)

17. Option B: Fixed Percentage of Available Support. The carrier's high-cost universal service support will be recalculated each quarter based on current data for that quarter, including the general reduction factor applied to all competitive ETCs under the interim cap rules. USAC will then apply a carrier-specific reduction factor in addition to the general reduction factor applied to all competitive ETCs under the interim cap. In 2009, an 80 percent reduction factor will be applied; in 2010, a 60 percent reduction factor; in 2011, a 40 percent reduction factor; in 2012, a 20 percent reduction factor; and in 2013, the carriers will not receive universal service high-cost support for any service areas subject to the merger commitments.[40]

2. USAC's Obligations

18. As soon as it is administratively feasible, USAC shall reconcile the support amounts provided to Verizon Wireless, Sprint Nextel, and other competitive ETCs since the effective dates of Verizon Wireless's and Sprint Nextel's merger commitments with the amounts they should have received consistent with this order. USAC shall also reduce, on a going-forward basis, disbursements to Verizon Wireless and Sprint Nextel and disburse support to other competitive ETCs as appropriate.[41]

19. For the sake of clarity, we summarize USAC's administrative duties in implementing these instructions. First, USAC must, in consultation with Verizon Wireless and Sprint Nextel, determine the appropriate baselines against which the reductions will be applied.[42] Second, USAC must, each quarter, determine the uncapped support amounts for all competitive ETCs, including Verizon Wireless and Sprint Nextel, consistent with the Commission's legacy high-cost universal service support rules. Third, USAC must, each quarter, apply a reduction factor to all competitive ETCs' support, as necessary to comply with the *Interim Cap Order*. Fourth, USAC must apply an additional reduction factor to Verizon Wireless's and Sprint Nextel's support as necessary, consistent with either Option A or B, to reclaim each carrier's high-cost universal service support. Finally, it may be necessary for USAC to

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if a carrier elects Option A and its nationwide annual high-cost universal service support baseline is $100 million, its nationwide quarterly support would be capped at $20 million in 2009, $15 million in 2010, $10 million in 2011, and $5 million in 2012. If, due to line loss, relinquishment of ETC status, or any other reason, the carrier were eligible for only $22.5 million in the third quarter of 2009 (without regard to its merger commitment), then USAC would need to apply a reduction factor to reduce the carrier's quarterly support by another $2.5 million. If by the first quarter of 2011 the carrier were eligible for only $9 million for that quarter, then no reduction factor would be necessary.

[40] For example, if a carrier elects Option B, and it was eligible to receive $10 million nationwide in the third quarter of 2009 (without regard to its merger commitment), USAC would apply an 80 percent reduction factor, resulting in a final support amount of $8 million for that quarter. If, due to line growth or other reasons, the carrier is otherwise eligible for $20 million in the first quarter of 2011, then USAC will apply a 40 percent reduction factor, resulting in a final support amount of $8 million for the quarter.

[41] For these purposes, we anticipate that the recovery of funds will occur through offsets to future universal service support, but USAC may require Verizon Wireless and Sprint Nextel to make an actual payment to USAC if future offsets will not be sufficient to accomplish the full recovery. As noted above, support surrendered by Sprint or Verizon Wireless by relinquishing competitive ETC status in one or more states may be available for redistribution to other competitive ETCs, absent a change to the cap adopted through a notice-and-comment rulemaking. *See supra* para. 12.

[42] If Option A is elected, then USAC must determine the 2008 or January 2009 baseline amount. If Option B is elected, the baseline for a given quarter will not be known until after the identical support and interim cap rules have been applied for that quarter.

revisit each quarter's support payment, consistent with the existing true-up processes for the local switching support and interstate common line support mechanisms.[43]

20. We further direct USAC to reserve any reclaimed funds as a fiscally responsible down payment on proposed broadband universal service reforms, as recommended in the National Broadband Plan, including to: index the E-rate funding cap to inflation to enhance broadband opportunities for children, teachers, schools, and libraries; support a Mobility Fund to improve 3G wireless broadband service in states with the worst coverage today; improve utilization of the Rural Health Care program to advance telemedicine in rural areas across the country, including Tribal lands; and, in the long term, directly support broadband Internet services for all Americans.[44] For example, we expect to propose a Mobility Fund by the fourth quarter of this year, which could be implemented beginning in the second half of 2011. Reserving funds now, rather than collecting them through a higher contribution factor at a later time, will ensure that we have funds on hand to rapidly implement the Mobility Fund if adopted, while minimizing unnecessary volatility in the contribution factor, which would otherwise decline and then increase as the universal service fund transitions to support broadband. The reclaimed funds will also provide a continuing benefit to the universal service fund by earning interest until they are disbursed.

21. To reserve these funds we find that two additional actions are required. First, we instruct USAC to continue projecting that competitive ETC support will be disbursed at the interim cap amount, independent of the merger commitments and the projected disbursements for individual competitive ETCs. For example, if a state has a quarterly interim cap amount of $20 million, USAC should project demand for that state at $20 million, even if disbursements based on the Commission's rules and Verizon Wireless's and Sprint Nextel's merger commitments are projected to be only $15 million. Any reclaimed support will be placed in reserve as discussed above.

22. Second, on an interim basis, we waive section 54.709(b), which requires that USAC account for any difference between its projected revenue requirements and its actual revenue requirements as a prior period adjustment in the next quarterly demand filing.[45] We find that there is good cause to waive section 54.709(b) on an interim basis.[46] Specifically, we find that the public interest is served by temporarily reserving these funds as a down payment for broadband universal service programs, as described above.[47] Such action will minimize unnecessary volatility in the contribution factor and enable us to take the fiscally responsible step of accumulating reserves for broadband universal

[43] Under the interstate common line support and local switching support mechanisms, support payments are initially made using projected data, but are adjusted ("trued up") at a later date when actual cost, revenue, and line count data are available. *See* 47 C.F.R. §§ 54.303, 54.903(a)(3).

[44] *National Broadband Plan* at 145-148. We note that the Commission recently launched proceedings to reform the universal service program as recommended by the National Broadband Plan, including by seeking comment on a proposal to transition all legacy competitive ETC high-cost support for voice-grade service to new universal service programs for broadband and the impact of such a proposal on the Verizon Wireless and Sprint Nextel merger commitments. *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, paras. 60-61 (rel. Apr. 21, 2010) (*Universal Service Reform NOI and NPRM*).

[45] 47 C.F.R. § 54.709(b). The precise terms of the rule require that USAC carry forward any "excess payments" from contributors to the next quarter. In this instance, the excess payments would be due to the reduction in disbursements to Sprint Nextel and Verizon Wireless. The "next quarter" refers to USAC's next quarterly demand filing. The effect of this rule is to reduce the contribution factor in the subsequent quarter.

[46] Pursuant to section 1.3 of the Commission's rules, "any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown." 47 C.F.R. § 1.3.

[47] *See supra* para. 20.

service reform, as we consider the National Broadband Plan.[48] To ensure appropriate and timely use of these funds, we waive section 54.709(b) for a period of only 18 months from the adoption of this order, unless the Commission earlier modifies section 54.709(b) as proposed in the NPRM, below.

IV. NOTICE OF PROPOSED RULEMAKING

23. In this NPRM, we seek comment on modifying our rules to better enable the Commission to reclaim certain high-cost support, and to use that support to help fund broadband universal service programs, consistent with the recommendations of the National Broadband Plan described above. First, we seek comment on amending the interim cap rule so that a state's interim cap amount would be adjusted if a competitive ETC serving the state relinquishes its ETC status. In the *Interim Cap Order*, the Commission capped high-cost support for voice service provided to competitive ETCs serving each state at the level of support such carriers were eligible to receive in March 2008, on an annualized basis.[49] This cap amount does not change even if the number of competitive ETCs serving the state changes.[50] We propose amending the interim cap rule so that, if a competitive ETC relinquishes its ETC status in a state, the cap amount for that state is reduced by the amount of support that the competitive ETC was eligible to receive in its final month of eligibility, annualized.

24. As discussed above, the goal of the *Interim Cap Order* was to rein in high-cost universal service disbursements, and additional support would not necessarily result in future deployment of expanded service.[51] Reducing the total amount of support available to competitive ETCs in a state when a competitive ETC relinquishes its ETC status in that state will not reduce support flowing to any individual competitive ETC. Reducing the pool of support in a state also would enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband programs, as recommended by the National Broadband Plan. We invite comment on this proposal.[52]

25. Second, we seek comment on amending section 54.709(b) to permit the Commission to provide USAC alternate instructions for implementing prior period adjustments.[53] In the order above, we adopt an interim waiver of section 54.709(b) to enable us to direct USAC to reserve reclaimed funds as we consider broadband universal service reform. Amending the rule as proposed would serve this same purpose, on a permanent basis. In addition, it would enable the Commission to provide USAC with alternate instructions regarding future excess funds in other situations without having to adopt a rule waiver.

26. We seek comment on how to develop a streamlined, administratively workable process for providing such instruction to USAC, if we amended section 54.709(b). We seek comment regarding the form that the instructions must take, including whether the instructions must be provided in an order,

[48] Without this waiver, we expect that the contribution factor would experience (1) in the first quarter of 2011, a sudden decrease associated with the one-time collection of excess support from Verizon Wireless and Sprint Nextel; (2) a plateau at an intermediate level as future reductions are applied on a going-forward basis to Verizon Wireless's and Sprint Nextel's support; (3) a spike as one-time support associated with the Mobility Fund or other non-recurring support for broadband universal service is implemented; and (4) a return to the current level as universal service is reformed to support recurring broadband programs. We find that it would be prudent to avoid these fluctuations and instead help stabilize the contribution factor.

[49] *Interim Cap Order*, 23 FCC Rcd at 8846, 8850, paras. 26, 39.

[50] *See supra* para. 9.

[51] *See supra* para. 10.

[52] We do not propose a draft rule because the existing interim cap rule is not codified.

[53] A proposed rule is attached as Appendix B.

public notice, or other form. We also seek comment on a process by which the Wireline Competition Bureau or Office of the Managing Director would issue a public notice providing instruction to USAC that would become effective absent action by the Commission within fourteen days. We note that, for the purpose of calculating the contribution factor, the Commission already has the authority to set demand and administrative expenses at levels other than those shown in USAC's quarterly demand projections.[54] The modification we propose here would permit the Commission, or the Wireline Competition Bureau or Office of the Managing Director on delegated authority, to instruct USAC to modify the prior period adjustments in the quarterly demand projections. We request comment on this proposal.

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act

27. This notice of proposed rulemaking does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995.[55] In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002.[56]

B. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. § 603,the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the SBA.[57] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[58]

C. *Ex Parte* Presentations

29. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[59] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[60] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[61]

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[54] *See* 47 C.F.R. § 54.709(a)(3) ("The Commission reserves the right to set projections of demand and administrative expenses at amounts the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice.").

[55] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

[56] Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

[57] *See* 5 U.S.C. § 603(a).

[58] *Id.*

[59] 47 C.F.R. §§ 1.1200-1.1216.

[60] 47 C.F.R. § 1.1206(b)(2).

[61] 47 C.F.R. § 1.1206(b).

D. Comment Filing Procedures

30. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[62] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.[63]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.
    - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
    - Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
    - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

31. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: www.bcpiweb.com; phone: 1-800-378-3160. Furthermore, three copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A452, Washington, DC 20554; e-mail: antoinette.stevens@fcc.gov.

32. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may

[62] 47 C.F.R. §§ 1.415, 1.419.

[63] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-115, Report and Order, 13 FCC Rcd 11322 (1998).

contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

33. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: (202) 418-0530 or TTY: (202) 418-0432.

34. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or theodore.burmeister@fcc.gov.

VI. ORDERING CLAUSES

35. Accordingly, it is ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, the request for review of a decision of the Universal Service Administrator filed by Corr Wireless Communications, LLC IS GRANTED IN PART AND DENIED IN PART as discussed herein.

36. IT IS FURTHER ORDERED that, pursuant to sections 1.103(a) and 1.4(b)(2) of the Commission's rules, 47 C.F.R. §§1.103(a) and 1.4(b)(2), this order SHALL BE EFFECTIVE upon release.

37. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, , 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, this notice of proposed rulemaking IS ADOPTED.

38. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Comments

Commenter	Abbreviation
Pine Belt Cellular, Inc.	Pine Belt
Rural Cellular Association	RCA
Rural Telecommunications Group, Inc.	RTG
Southern Communications Services, Inc. d/b/a/ SouthernLINC Wireless	SouthernLINC Wireless
Sprint Nextel Corporation	Sprint Nextel
Universal Service for America Coalition	USA Coalition
Verizon/Alltel Management Trust	Trust
Verizon Wireless	Verizon Wireless
Wisconsin RSA #4 Limited Partnership, et al.	Cellcom Companies

Reply Comments

Commenter	Abbreviation
Corr Wireless Communications, LLC	Corr
Rural Cellular Association	RCA
Sprint Nexel Corporation	Sprint Nextel
Public Utility Commission of Oregon	Oregon Commission
United States Telecom Association	USTelecom
Universal Service for America Coalition	USA Coalition
Verizon Wireless	Verizon Wireless

APPENDIX B

Proposed Rules

PART 54 – UNIVERSAL SERVICE

1. The authority citation for Part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 201, 205, 214,

and 254 unless otherwise noted.

Subpart H – Administration

2. Amend Section 54.709 by amending the first sentence of paragraph (b) to read as follows:

(b) If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter, unless otherwise instructed by the Commission. * * *

APPENDIX C

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"),[1] the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

I. Need for, and Objectives of, the Notice:

1. In the NPRM, the Commission seeks comment on a proposal to modify its interim cap on support for competitive eligible telecommunications carriers (ETCs) so that if a competitive ETC relinquishes its ETC status, the amount of support it receives would be removed from the cap amount. The Commission is considering this action so that support removed from the cap may be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the National Broadband Plan, including to index the E-rate funding cap to inflation to enhance broadband opportunities for children, teachers, schools, and libraries; support a Mobility Fund to provide wireless broadband service in areas that lack coverage; improve utilization of the Rural Health Care program to advance telemedicine in rural areas across the country, including Tribal lands; and, in the long term, directly support broadband Internet services for all Americans.

2. The Commission also seeks comment on a proposal to modify its rules governing the calculation of the universal service fund contribution factor.[4] Specifically, we seek comment on amending section 54.709(b) to enable the Commission to provide USAC with alternate direction regarding the application of excess contributions from prior quarters. The current rule requires that excess contributions be applied in the next quarter, effectively reducing the contribution factor in that quarter. In the associated Order, the Commission waives the rule on an interim basis and directs USAC to reserve reclaimed funds as a potential down payment on proposed broadband universal service reforms. In the NPRM, the Commission seeks comment on amending the rule to permit it to do so permanently. In addition, amending the rule as proposed would enable the Commission to provide USAC with alternate instructions regarding future excess funds in other situations without having to adopt a rule waiver.

II. Legal Basis:

3. This legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254 and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411.

III. Description and Estimate of the Number of Small Entities to which the Rules Will Apply:

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id.*

[4] Telecommunications carriers make contributions to the universal service fund based a percentage of their interstate and international telecommunications revenues. This percentage is the contribution factor. Carriers pass these contributions through to their customers as a line item on their bills.

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

5. **Small Businesses**. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[9]

6. **Small Organizations**. Nationwide, as of 2002, there are approximately 1.6 million small organizations.[10] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[11]

7. **Small Governmental Jurisdictions**. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[12] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[13] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[14] Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[15] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because

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[5] 5 U.S.C. § 603(b)(3).

[6] 5 U.S.C. § 601(6).

[7] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[8] 15 U.S.C. § 632.

[9] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://web.sba.gov/faqs (accessed Apr. 2010).

[10] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[11] 5 U.S.C. § 601(4).

[12] 5 U.S.C. § 601(5).

[13] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 272, Table 415.

[14] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[15] 15 U.S. C. § 632.

any such dominance is not "national" in scope.[16] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. **Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[17] According to Commission data,[18] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

10. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[19] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[20] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[21] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[22] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[23] For the category of Cellular and Other Wireless

[16] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) ("Small Business Act"); 5 U.S.C. § 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

[17] 13 C.F.R. § 121.201, NAICS code 517110.

[18] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (Aug. 2008). This source uses data that are current as of November 1, 2006.

[19] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[20] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[21] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[22] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[23] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[24] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[25] Thus, we estimate that the majority of wireless firms are small.

11. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[26] The SBA has approved these definitions.[27] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

12. **1670-1675 MHz Services.** An auction for one license in the 1670-1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

13. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[28] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[29] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[30] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[31] We have estimated that 222 of these are small under the SBA small business size standard.

14. **Broadband Personal Communications Service.** The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[32] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[33] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[34] No small

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[24] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[25] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[26] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[27] *See Alvarez Letter 1998.*

[28] 13 C.F.R. § 121.201, NAICS code 517210.

[29] *Id.*

[30] "Trends in Telephone Service" at Table 5.3.

[31] "Trends in Telephone Service" at Table 5.3.

[32] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996) ("*PCS Report and Order*"); *see also* 47 C.F.R. § 24.720(b).

[33] *See PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

[34] *See Alvarez Letter 1998.*

businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[35] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[36]

15. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[37] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[38] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[39] Of the 14 winning bidders, six were designated entities.[40] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[41]

16. **Advanced Wireless Services**. In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[42] This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands ("AWS-1"). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[43] Four winning bidders that identified themselves as very small businesses won 17 licenses.[44] Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

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[35] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[36] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[37] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

[38] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice*, 20 FCC Rcd 3703 (2005).

[39] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *Public Notice*, 22 FCC Rcd 9247 (2007).

[40] *Id.*

[41] *See* Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice*, 23 FCC Rcd 7496 (2008) ("AWS-1 and Broadband PCS Procedures Public Notice").

[42] *See* AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[43] *Id.* at 23 FCC Rcd at 7521-22.

[44] *See* "Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *Public Notice*, 23 FCC Rcd 12749-65 (2008).

17. **700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[45] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[46] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[47] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[48] The SBA approved these small size standards.[49] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[50] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[51] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[52] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

18. In 2007, the Commission adopted the *700 MHz Second Report and Order*.[53] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E

[45] *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) ("*Channels 52-59 Report and Order*").

[46] *See Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, ¶ 172.

[47] *See id.*

[48] *See id*, 17 FCC Rcd at 1088, ¶ 173.

[49] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

[50] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

[51] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[52] *See id.*

[53] Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone*, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, Second Report and Order, FCC 07-132 (2007) ("700 MHz Second Report and Order"), 22 FCC Rcd 15289 (2007).

block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73.[54] A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[55] The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.[56]

19. **700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[57] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[58] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[59] SBA approval of these definitions is not required.[60] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses.[61] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[62]

20. **Specialized Mobile Radio.** The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[63] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[64] The SBA has approved these small business

[54] Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice*, 23 FCC Rcd 4572 (2008).

[55] *Id.* 23 FCC Rcd at 4572-73.

[56] *Id.*

[57] *See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746-764 MHz Band Second Report and Order*").

[58] *See 746-764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

[59] *See id.*

[60] *See id.*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[61] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

[62] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[63] 47 C.F.R. § 90.814(b)(1).

[64] 47 C.F.R. § 90.814(b)(1).

size standards for the 900 MHz Service.[65] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[66] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[67]

21. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[68] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[69] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

22. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[70] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

23. **Cellular Radiotelephone Service.** Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[71] Bidding credits for designated entities were not available in Auction 77.[72] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[73]

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[65] *See Alvarez Letter 1999.*

[66] *See* "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[67] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[68] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

[69] *See*, "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

[70] *See generally* 13 C.F.R. § 121.201, NAICS code 517210.

[71] *See* Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *Public Notice*, 23 FCC Rcd 6670 (2008).

[72] *Id.* at 6685.

[73] *See* Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *Public Notice*, 23 FCC Rcd 9501 (2008).

24. **Private Land Mobile Radio ("PLMR").** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[74] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[75]

25. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

26. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[76] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[77] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.[78] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

27. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses [79] in 2007.[80] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[81] Neither of the two winning bidders sought such designated entity status.[82]

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

[74] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[75] *See generally* 13 C.F.R. § 121.201.

[76] The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[77] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

[78] 13 C.F.R. § 121.201, NAICS code 517210.

[79] *See "Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,"* Public Notice, 21 FCC Rcd 12393 (WTB 2006).

[80] *See "Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,"* Public Notice, 22 FCC Rcd 4714 (2007) ("*Auction No. 69 Closing PN*").

[81] *Auction No. 69 Closing PN*, Attachment C.

[82] *See Auction No. 69 Closing PN.*

28. The NPRM does not propose any reporting, recordkeeping, or other compliance requirements.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[83]

30. The NPRM proposes reducing the size of the interim cap on competitive ETC support when any competitive ETC relinquishes its ETC designation. Under certain circumstances, this may have a significant economic impact on other competitive ETCs that are small entities. For example, as described in footnote 31 of the Order, the reduction in size of a state interim cap amount could negatively affect a competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount. While the designation of another competitive ETC would have an impact on the support received by the small entity even without the adoption of the proposed rule, the proposed rule could magnify that impact. The Commission is seeking comment on this rule, in part to consider its necessity and any alternatives. Because, however, the purpose of the proposed rule is to reduce the amount of high-cost universal service support received by competitive ETCs, it is not likely that a significant alternative could be chosen that would minimize the effect of the proposed rule if it is, in fact, adopted.

31. The NPRM also seeks comment on a proposed rule that would give the Commission the ability to provide the universal service administrator alternate instructions with regard to the use of extra or unused funds. The current rules require that the administrator use such funds to reduce the need for universal service contributions in the next quarter. The proposed rule would permit the Commission to instruct the administrator to reserve the funds for later use. Because the later use of the funds would also require universal service contributions, the overall effect of this proposed rule would be to shift the time of the contributions' collection, not to change the long-term amount contributed. Accordingly, we do not believe there is a significant economic impact, on small entities or otherwise, associated with this proposed rule.

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:

32. None.

[83] 5 U.S.C. § 603.

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05-337, CC Docket No. 96-45.*

Today, the Commission takes another step in implementing the National Broadband Plan and reforming the Universal Service Fund (USF). To help broadband become our 21st century engine for economic growth and job creation, and to ensure that the benefits of high-speed Internet extend to all Americans, it is vital that we transform USF from a program that helped achieve universal telephone service to one that will deliver universal broadband. And it is vital that we do so in a financially responsible manner, protecting consumers as we do the work of reform.

Today's decision ensures that USF support for mobile voice that Verizon Wireless and Sprint had previously agreed to relinquish will be used as a down payment on broadband universal service reform.

Transformation of USF won't be easy, but it's underway, with important enhancements of USF's E-rate program scheduled for a vote later this month. This will expand broadband opportunities for schools and libraries, providing more access and flexibility for these anchor institutions to empower teachers, and serve children and their communities. Our rural Health Connect initiative will improve patient care and reduce medical costs through greater broadband investment for medically underserved communities. Our Mobility Fund will fill in gaps in 3G and 4G wireless coverage. Reformed Lifeline and Link-Up programs will more efficiently connect more Americans to broadband. And our Connect America Fund will catalyze private investment in broadband in rural areas of the country.

An essential part of reform will be driving greater and greater efficiency through USF, ensuring that the funds are spent wisely, and continuing to employ caps and other incentive structures to maximize the return on USF's investment and limit the financial burden on consumers. Today's action is one step to help ensure the Fund will have the needed resources without increasing its rate of growth. I look forward to building on today's action as we move forward with comprehensive, fiscally sensible universal service reform.

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05-337, CC Docket No. 96-45.*

I welcome the Commission's effort to finalize the long-outstanding question of what to do with the competitive eligible telecommunications carrier (CETC) support surrendered by Verizon Wireless and Sprint Nextel pursuant to commitments made in separate transactions in 2008. And I find it laudable that today's Order seeks to redistribute the surrendered support in ways that will meet the goals of the National Broadband Plan.

It is regrettable, however, that the Commission confronts this matter under less-than-desirable circumstances. In particular, the Commission in 2008 had the opportunity to reform Universal Service and put America back in the vanguard of advanced telecommunications. Instead, the Commission adopted an illusory band-aid—an "interim, emergency cap" on CETC support—intended to contain the High Cost program. Contrary to the strictures of the Telecommunications Act, the cap was not technology-neutral, and it had the perhaps unintended effect of hindering the deployment of wireless voice service to areas of the United States that need it most. Just as dismally, adoption of the cap put real reform of Universal Service on the back-burner when it should have been on the front and on high. So today, even after prolonged Commission deliberations over how to implement the interim cap, we still find ourselves agonizing over related issues, such as the situation addressed in the instant order. This all could have been avoided. Bygones.

My concern is to encourage that the surrendered support goes to deploying services where they are needed, and fast. I strongly support using this funding to index the cap on E-Rate to inflation. E-rate is, I believe, one of the best and most successful programs in FCC history, connecting schools and libraries to the Internet and generations of people to the enabling technologies of the Twenty-first century. But, as a far-reaching program that is nonetheless capped, E-Rate demand consistently outpaces available support. The adjustment to inflation, as proposed in the May NPRM on E-rate, can help significantly. It will not be enough to meet demand, to be sure, but it will have a prompt and direct impact on meeting the telecommunications needs of schools and libraries across the country.

That said, I am not totally pleased with today's outcome. I am concerned about how and when the remainder of the surrendered funding will be distributed. These funds are needed in circulation now. Wireless broadband deployment hinges on more funding. So do jobs. Yet Universal Service reform is still, at best, many months off. We still need to create the CAF and a Mobility Fund for wireless and also expand the Rural Health Care program. Right now we lack the needed mechanisms for the timely and efficient deployment of these newly-available funds.

I genuinely dislike holding on to ratepayers' contributions when those funds could and should be distributed immediately for services in areas that urgently need them. I understand we are boxed in because of the circumstances outlined above, but this predicament shows us once again the costs we pay for previous wrong-headed decisions and delay. Again, I have high hopes that the Commission will move forward with plans for the Mobility Fund and the Rural Health Care program, as well as undertake the comprehensive Universal Service reform proposed in the National Broadband Plan. High-speed broadband with high-speed decision-making is the need of the hour. Now that we have, after many long years, a National Broadband Plan, I look forward to working with the Chairman and all my colleagues to make good things happen.