

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF VERIZON¹ AND VERIZON WIRELESS

I. INTRODUCTION AND SUMMARY.

The Commission is moving in the right direction with Universal Service Fund (USF or “fund”) and related intercarrier compensation system reforms for the approaching all-broadband era. Recommendations in the National Broadband Plan to phase out USF support for voice services, repurpose the fund for broadband, and reduce intercarrier compensation rates are necessary steps. The Commission now seeks comment on two related, more specific proposals: (1) reducing state-specific caps on competitive eligible telecommunication carrier (CETC) support when a carrier relinquishes its ETC status; and (2) reserving reclaimed high cost support for future broadband priorities.² The Commission should adjust state CETC caps when a carrier relinquishes its ETC status and move quickly to repurpose the fund for broadband, which would eliminate the need to reserve universal service funding.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *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*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-337, CC Docket No. 96-45, ¶¶ 23-26 (Sept. 3, 2010) (“*Corr NPRM*”).

Adjusting state-specific CETC high cost support caps to reflect relinquished ETC status and corresponding universal service funding is essential in order to phase out voice support and repurpose the fund for broadband as the National Broadband Plan recommends.³ This approach is also consistent with the *Interim Cap Order*, which was adopted more than two years ago to protect consumers from continuing, rapid increases in CETC funding.⁴ The Commission's other proposal to retain reclaimed high cost funding to use in the future creates legal questions and is not necessary. Instead, the Commission should move quickly to reform and refocus the existing USF and phase in support for new broadband programs as legacy high cost support for voice services is phased out.

II. RELINQUISHED CETC SUPPORT SHOULD BE DEDUCTED FROM STATE-SPECIFIC CAPS.

The Commission's proposal to adjust the *Interim Cap Order* procedures and reduce state-specific CETC caps when a carrier relinquishes its ETC status—and corresponding high cost funding—makes sense. *Corr NPRM* ¶¶ 23-24. The goal of many of the universal service recommendations in the National Broadband Plan is to free up funding for broadband. NBP at 147-48. One of the centerpieces of this part of the plan is to eliminate CETC funding altogether in favor of a technology- and provider-neutral broadband funding (in addition to limited, one-time funding for mobility infrastructure) that allows all carriers to compete for broadband support in areas where there is no business case for private investment. *Id.* Likewise, the National Broadband Plan recommends phasing out all other legacy high cost voice support over

³ See *Connecting America: The National Broadband Plan*, <http://download.broadband.gov/plan/national-broadband-plan.pdf>, at 144 (2010) (“National Broadband Plan” or “NBP”).

⁴ *High Cost-Universal Service Support, Federal-State Joint Board on Universal Service, Order*, 23 FCC Rcd 8834 (2008) (“*Interim Cap Order*”).

time. *Id.* at 144. On the CETC side, these objectives are not achievable within a reasonable period of time if support to providers that relinquish their ETC status in a state is merely redistributed to other CETCs (almost all of which are wireless carriers) in that state. Moreover, as a policy matter it does not make sense to subsidize carriers in areas where a provider offers service without support—and worse still to provide *more* support to competitors when a carrier relinquishes its funding.

At the moment, the Commission is only phasing out CETC support to Verizon Wireless and Sprint, not all CETCs. The Commission is correct that once funding to these providers is reduced in particular high cost areas to a level where it does not make sense to retain ETC obligations in exchange for dwindling support, Verizon Wireless and Sprint may initiate relinquishment proceedings at the Commission and with state commissions as contemplated by Section 214 of the 1996 Act. 47 U.S.C. § 214(e). To implement the National Broadband Plan, the Commission must also soon begin phasing out support to all other CETCs, and the same circumstances will likely trigger additional relinquishment proceedings. Even though the Commission will continue to phase out CETC support to those carriers that do not relinquish their ETC status, allowing relinquished support to be redistributed to other CETCs in a state would significantly delay the process of eliminating this funding altogether in order to free up USF support for broadband.

It was never the intent of the *Interim Cap Order* to impede national broadband priorities in this way. The National Broadband Plan and its recommendation to phase out all CETC support did not exist when the *Interim Cap Order* was adopted in 2008. At that time the Commission was focused on stopping the explosive, year-over-year growth in CETC support. *Interim Cap Order* ¶ 1. The state-specific caps, based on March 2008 annualized CETC support,

were adopted in order to give state commissions flexibility to designate new ETCs to share in existing CETC per-line support within a state if a further division of funding would best serve the public interest in a particular state. *Id.* ¶ 26. This approach also allowed states to direct support to areas most in need of subsidies without reducing support in other states. *Id.* The state-specific caps were not designed to allow competitors of CETCs that relinquish their ETC status to receive a windfall. That approach would itself violate the *Interim Cap Order*, which does not contemplate an increase in a CETC's support as a result of another carrier's relinquished ETC status. *Id.* ¶¶ 27-28. In addition, increasing subsidies to one provider because another carrier gives up support would be antithetical to the entire purpose of the interim cap, which is to serve as a cost control measure for the benefit of consumers who pay for the fund. *Id.* ¶ 1. Finally, as a universal service policy matter it does not make sense to increase subsidies to other providers in areas where carriers are willing to serve without support. Government subsidies are clearly not necessary where service is in fact being provided by unsubsidized carriers.

III. THE COMMISSION SHOULD MOVE QUICKLY TO REPURPOSE THE USF FOR BROADBAND INSTEAD OF HOLDING RECLAIMED UNIVERSAL SERVICE FUNDING IN RESERVE.

The Commission's proposal to continue to collect and pool for future use the reclaimed high cost funding is well-intended but not necessary. *Corr NPRM* ¶¶ 25-26. Instead, the Commission should move quickly to reform and refocus the existing USF and phase in support for new broadband programs as legacy high cost support for stand-alone voice services is phased out.

As an initial matter, Verizon supports the important universal service and related intercarrier compensation reforms in the National Broadband Plan, and the Commission should

move ahead with these initiatives. Indeed, the ready alternative to holding reclaimed USF support in reserve is to quickly repurpose the fund for broadband and phase in distributions from new broadband programs as the Commission phases out legacy support for voice services. This approach avoids altogether potential legal hurdles with stockpiling universal service funding. If there must be a short lag between when the Commission begins reducing legacy voice support and when the new broadband programs are up and running, the Commission should use the savings from these reductions to reduce the contribution factor during that period of time, which has the benefit of reducing the cost of universal service to consumers. In that situation the National Broadband Plan’s proposed gradual reductions in legacy voice support, instead of flash cuts, should avoid significant swings in the factor that could cause consumers concern. *Corr NPRM* ¶ 22, n.48. And even if the factor were to vary somewhat during this period, under the current system consumers are already (regrettably) accustomed to such quarterly swings.

The proposal to continue to collect and pool universal service funding in anticipation of new broadband programs raises legal questions. First, references in Section 254 to “specific” and “predictable” USF programs and support—and contributions collected for “established” universal service mechanisms—counsel against reserving support for mechanisms that do not yet exist. 47 U.S.C. § 254(b)(5) (requiring that universal service policies ensure that there are “*specific, predictable and sufficient Federal and State mechanisms* to preserve and advance universal service”) (emphasis added); and 47 U.S.C. § 254(d) (requiring that contributions to universal service be structured in such a way that carriers contribute “on an equitable and nondiscriminatory basis, to the *specific, predictable, and sufficient mechanisms established by the Commission* to preserve and advance universal service”) (emphasis added).

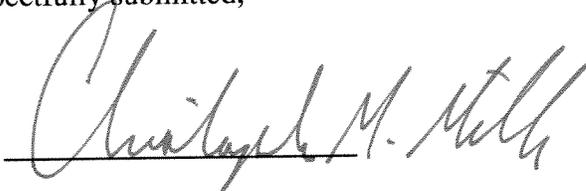
Second, reducing the contribution factor until the new broadband programs are in place is

the safer approach because collecting universal service funding for undefined purposes runs the risk of going outside the constitutional boundaries set by the courts. Some courts have said that universal service does not run afoul of the federal Constitution, but only to the extent that universal service contributions are considered to be “fees,” not “taxes.” See *Texas Office of Public Utility Counsel, et al. v. FCC*, 183 F.3d 393, 427-28 (5th Cir. 1999). Government fees typically involve a special benefit (e.g., a license or a permit) received by the party that pays the fee, or at least a discernable relationship between the payer and program beneficiaries. *Id.* Here, collecting universal service contributions for anticipated broadband needs makes this analysis difficult because the specific benefits and intended program beneficiaries of new USF broadband initiatives will not be known until the Commission makes additional decisions. The Commission does propose to use reserved universal service support to implement recommendations in the National Broadband Plan including indexing the E-Rate cap to inflation, funding the anticipated new USF broadband programs, and improving utilization of the rural healthcare fund. *Corr NPRM* ¶ 20. However, only one of these recommendations—the change to the E-Rate cap⁵—has been adopted.

⁵ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket No. 02-6, GN Docket No. 09-51 (Sept. 28, 2010).

For reasons discussed herein, the Commission should adjust state CETC caps when a carrier relinquishes its ETC status and move quickly to repurpose the fund for broadband, which would eliminate the need to reserve universal service funding.

Respectfully submitted,

By: 

Michael E. Glover, *Of Counsel*

Edward Shakin
Christopher M. Miller
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, VA 22201-2909
(703) 351-3071

John T. Scott, III
VERIZON WIRELESS
1300 I Street, NW
Suite 400 West
Washington, DC 20005
(202) 589-3770

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Attorneys for Verizon
and Verizon Wireless