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	)	

OPPOSITION OF VERIZON[1] AND VERIZON WIRELESS TO PETITIONS FOR RECONSIDERATION

The petitions to reconsider the Commission's order implementing 2008 merger commitments by Verizon Wireless and Sprint should be denied.[2] The Petitions are merely a repeat of Petitioners' previous efforts to obtain an unnecessary and unjustified windfall as a result of the reduced support to Verizon Wireless and Sprint. That was never the intent of these commitments and would be antithetical to the associated merger orders[3] and the Commission's

---

[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 Order*"). Petition for Partial Reconsideration of SouthernLINC Wireless and the Universal Service for America Coalition, *High Cost-Universal Service Support, et al.*, WC Docket No. 05-337, CC Docket No. 96-45 (Sept. 29, 2010) ("*SouthernLINC Petition*"); Joint Petition for Reconsideration, Corr Wireless Communications, Allied Wireless Communications Corp., United States Cellular Corporation, et al., *High Cost-Universal Service Support, et al.*, WC Docket No. 05-337, CC Docket No. 96-45 (Oct. 4, 2010) ("*Joint Petition*") (collectively "Petitioners" and "Petitions").

[3] *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*

Interim Cap Order.[4] The Commission correctly rejected Petitioners' efforts to obtain a windfall, and the reconsideration petitions should be denied.

DISCUSSION

1. Petitioners are in the exact same position today under the *Interim Cap Order* as they would have been had the Commission never acted to implement the merger conditions. As a result, they have no basis to complain; their real disagreement is with the *Interim Cap Order* itself, not with the implementation of the merger conditions.

Petitioners suggest that the *Corr Order* should be tossed aside for various reasons under the Administrative Procedures Act (APA), all of which lack merit. *See SouthernLINC Petition* at 12 (suggesting that the *Corr Order* violates APA notice and comment requirements because it "strays too far from the issues raised by the *Corr Wireless Request for Review*"); *Id*. at 17 (suggesting that the *Corr Order* is arbitrary and capricious because identical support to wireless carriers helped to expand certain wireless networks); and *Joint Petition* at 17-18 (suggesting that the *Corr Order* is arbitrary and capricious because the Verizon Wireless and Sprint merger conditions were not really "voluntary" commitments).

Their arguments make little sense, however, because there is no connection between the Verizon Wireless and Sprint merger commitments and the amount of support available to other competitive eligible telecommunications carriers (CETCs), such as Petitioners, under the *Interim*

(Continued . . .)
is Consistent with Section 310(b)(4) of the Communications Act, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 197 (2008); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer of Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶ 108 (2008) (collectively the "merger orders").

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

Cap Order. Petitioners' real complaint is with the *Interim Cap Order* itself and its limit on the amount of support available to CETCs in each state. But Petitioners already lost that appeal.[5] And the fundamental flaw with all of these APA claims is that for Petitioners, nothing whatsoever has changed. Despite the *Corr Order*, the underlying request for review filed by Corr, and the Commission's 2008 Verizon Wireless and Sprint merger orders, Petitioners are in the same position, and will receive exactly the same support, vis-à-vis the *Interim Cap Order*.

In the *Corr Order*, the Commission *agreed with* Corr that "USAC cannot modify the interim cap amount by removing Verizon Wireless's and Sprint Nextel's support," and therefore provided guidance to the Universal Service Administrative Company (USAC) as to how to implement the merger conditions to ensure that Petitioners' capped support would not be affected by those conditions. *Corr Order* ¶¶ 7, 13. The Commission had full discretion to adopt an order explaining how to implement the merger conditions without changing the *Interim Cap Order* or the Commission's other Universal Service Fund (USF or "fund") rules so long as it did so consistent with those orders and rules—which the *Corr Order* does. And as a practical matter, if the Commission in fact desired to implement the merger conditions (recommended in the National Broadband Plan),[6] it had no choice but to issue a further order because until now the Commission had "provided no specific direction regarding how these commitments should be

---

[5] *Rural Cellular Association, et al. v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009). Moreover, even if Petitioners were somehow impacted by the *Corr Order*—which they were not—they continue to ignore the fact that the *Interim Cap Order* itself affords CETCs a remedy if they believe the amount of support they receive is insufficient. CETCs may seek an exemption from the interim cap if they demonstrate that their own costs "meet the support threshold in the same manner as the incumbent LEC" serving the relevant area. *Rural Cellular Association*,588 F.3d at 1104.

[6] *See Connecting America: The National Broadband Plan*, http://download.broadband.gov/plan/national-broadband-plan.pdf, at 144, (2010) ("National Broadband Plan" or "NBP").

implemented. . . ." *Corr Order* ¶ 4.

The issues raised by Corr's underlying request may have contributed to the extent of the guidance issued by the Commission to USAC in the *Corr Order*, but the Commission was always free under the APA to implement the carrier-specific merger conditions (which do not apply to Petitioners) and to interpret those conditions in light of the existing interim cap regardless of the issues raised by Corr. Corr and the other Petitioners clearly hoped to *benefit from* the merger conditions through an unjustified windfall at the expense of Verizon Wireless, Sprint, and the consumers who pay the cost of universal service support, but Petitioners' irrational expectation is immaterial for APA purposes.

Moreover, the merger conditions and the *Interim Cap Order* itself were adopted as cost control measures for the benefit of all consumers, who pay for the fund through charges on their monthly bills. Nothing in the merger orders or the *Interim Cap Order* suggests that the Commission was required to "redistribute to other competitive ETCs the high-cost universal service support reclaimed from Verizon Wireless and Sprint Nextel." *Corr Order* ¶ 10. Just the opposite is true. If the Commission did redistribute Verizon Wireless and Sprint support to other CETCs, then the stated purpose of the merger conditions—which ultimately was a cost savings for consumers who pay for the fund—would make no sense. *Id*. ¶ 4. Such an approach would also violate the express language of the Verizon Wireless commitment, which made clear that the commitment to forgo support that Verizon Wireless was entitled to receive under the rules was made with the understanding that reclaimed support would *not* in fact be redistributed to other CETCs. *Id*.

Likewise, nothing about the two options the Commission gave Verizon Wireless and Sprint to calculate the baseline for funding reductions over a five-year period changes the

amount of support to other CETCs under the *Interim Cap Order*. *Corr Order* ¶¶ 15-17. Joint Petitioners complain at length that "Option B" in the *Corr Order*, which accounts for increases in subscribers in a way that will reduce Verizon Wireless support by an even greater amount, will cause Joint Petitioners themselves to get less support than if the Commission instead reduced Verizon Wireless' support on a percentage basis at a fixed moment in time each year. *Joint Petition* at 8-13. Again, Petitioners' real complaint is with the *Interim Cap Order*, not the Verizon Wireless merger condition. Joint Petitioners object to a situation where Verizon Wireless may increase its subscriber count in a state, which—if not off-set by corresponding gains by other CETCs in the state—would by operation of the state-specific caps increase Verizon Wireless' share of the fixed amount of CETC support available in that state. *Id*. With Option B, that additional support that goes to Verizon Wireless is also subject to the merger order reduction, meaning a certain percentage, and eventually all of it, will go back to the fund, but the amount of USF support available to other CETCs is the same regardless of the merger condition. Where Verizon Wireless competes effectively and gains relative market share, the *Interim Cap Order* works to increase its share of funding under the state-specific caps. But Joint Petitioners are no worse off because of Option B than they otherwise would be if the Commission never implemented the merger conditions.

2. Petitioners also seek reconsideration of the Commission's proposal to continue to collect and pool for future use the high cost support that is reclaimed from Verizon Wireless and Sprint, and from other carriers once the Commission takes additional steps to free up support for broadband. *SouthernLINC Petition* at 7-11; *Joint Petition* at 20-22. This again, however, is just another part of their argument that the money should be used to provide them with an unjustified windfall, rather than being repurposed to support the broader national interest in promoting

broadband deployment in the limited areas that still lack broadband coverage.

In any event, this issue—how to handle USF reductions if new broadband mechanisms are not up and running as support is freed up—is more appropriate to address as part of the Notice of Proposed Rulemaking attached to the *Corr Order*. *Corr Order* ¶¶ 25-26. In the meantime, Petitioners have failed to show that the Commission cannot, for a short interim period following the *Corr Order* and before the Commission can feasibly issue another universal service decision, waive its own rule and direct USAC not to apply all contributions collected in the present quarter to the next USF contribution factor. And they certainly have not shown that the Commission must instead pay an unjustified windfall to Petitioners.

Respectfully submitted,

By: _____

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

Attorneys for Verizon
and Verizon Wireless

Michael E. Glover, *Of Counsel*

October 14, 2010