

Tamara Preiss
Vice President
Federal Regulatory Affairs



February 3, 2011

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2540
Fax 202 336-7922
tamara.preiss@verizon.com

Ex Parte

VIA ELECTRONIC FILING

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

Re: In the Matter of Federal-State Board on Universal Service; High-Cost Universal Service Support, CC Docket 96-45; WC Docket No. 05-337

Dear Ms. Dortch:

Verizon Wireless provides this letter in response to recent correspondence and *ex parte* presentations¹ submitted by Lukas, Nace, Gutierrez & Sachs, LLP (“Lukas Nace”), ostensibly on behalf of certain wireless telecommunications providers that have been designated as competitive eligible telecommunications carriers (the “Complainant ETCs”).²

At bottom, these submissions and *ex parte* presentations are no more than an attempt to get a second -- or third -- bite at the apple to overturn a series of Commission decisions the Complainant ETCs oppose, and to circumvent the Commission’s decision to repurpose the universal service funds recaptured from Verizon Wireless to support the Commission’s broadband initiatives. Under their theory, much of the support recaptured from Verizon Wireless – money the Commission intends to use for other universal service purposes such as the

¹ This letter may be considered responsive to Lukas Nace’s submissions and *ex parte* notices filed December 3, 21 and 27, 2010, including the October 29, 2010 letter from David A. LaFuria and Robert S. Koppel to Karen Majcher, Vice President, High Cost and Low Income Division, Universal Service Administrative Company (“USAC Appeal Letter”) attached to and incorporated by reference in the December 3, 2010 *ex parte* notice.

² Lukas Nace has at various times identified United States Cellular Corporation, Allied Wireless Communications Corp., Commnet Wireless, LLC and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless among the parties whose interests it represents in connection with its submissions and *ex parte* presentations. See, e.g., *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Letter from David A. LaFuria to Marlene H. Dortch, n. 1 (filed Dec. 27, 2010); *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Letter from David A. LaFuria to Marlene H. Dortch, n. 1 (filed Dec. 21, 2010); *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Letter from David A. LaFuria to Marlene H. Dortch (filed Dec. 3, 2010). At other times, however, it is unclear whom Lukas Nace purports to represent.

proposed new Mobility Fund – would instead be funneled to the Complainant ETCs. That result, aside from contradicting Commission orders and rules, would undercut the entire purpose of the Commission’s decision to recapture Verizon Wireless’ support for new USF initiatives as a first step in overall reform of the universal service fund.

The Complainant ETCs opposed the Commission’s 2008 decision to establish an interim cap on the amount of federal high cost support available to CETCs (the “Interim Cap”), but they failed both in their efforts to dissuade the Commission and in their subsequent appeal.³ Following the mergers of Rural Cellular Corporation (“RCC”) and Alltel Communications Corporation (“Alltel”) with Verizon Wireless,⁴ they contended that the high cost support reclaimed from Verizon Wireless and Sprint Nextel should be re-distributed to them. Having failed to achieve this USF windfall when the Commission decided, in the *Corr Wireless Order*, to prohibit this redistribution of USF support,⁵ they are now mounting collateral attacks on all of these orders by questioning the Verizon Wireless entities’ CETC status at the Commission.

Worse, even though they have asked this Commission to deny much of the support Verizon Wireless properly applied for, the Complainant ETCs have simultaneously sought the same end result – denial of Verizon Wireless’ right to universal service support – from numerous state commissions. Verizon Wireless filed what would otherwise have been routine, *pro forma* ETC amendments to conform its affiliates’ ETC designations to reflect the integration of RCC and Alltel with Verizon Wireless. These *pro forma* amendments were fully contemplated by the Commission’s orders approving those mergers. Moreover, such post-merger administrative filings are routine and commonplace, as evidenced by the summary approval by the Wireline Bureau of Verizon Wireless’ amendment petitions for Virginia, Alabama, and North Carolina and similar filings by other carriers in various states that were not opposed and have been routinely granted.⁶ These filings have attracted the attention of the Complainant ETCs only as potential vehicles for minimizing high cost support for Verizon Wireless and, thus, up-ending

³ *In the Matter of 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 (2008), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009) (“*Interim Cap Order*”).

⁴ *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 12463 (2008) (“*RCC Merger Order*”); *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 of Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17444 (2008) (“*Alltel Merger Order*”).

⁵ *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Request for Review by Corr Wireless Communications, LLC, of Decision of Universal Service Administrator*, CC Docket No. 96-45, WC Docket No. 05-337, Order and Notice of Proposed Rulemaking, 25 FCC Rcd. 12854 (2010) (“*Corr Wireless Order*”); *recon. pending*. Given the Commission’s “stated goal in the *Interim Cap Order* of reining in high-cost universal service support disbursements,” it declined to redistribute the reclaimed high-cost support to other competitive ETCs and concluded that the public interest will be better served by repurposing the support for other universal service objectives. *Id.* at ¶10.

⁶ *In the Matter of Federal-State Board on Universal Service, Cellco Partnership d/b/a Verizon Wireless, Petitions for Pro Forma Amendment of Eligible Telecommunications Carrier Designations in the Commonwealth of Virginia and the States of Alabama and North Carolina*, WC Docket 09-197, CC Docket 96-45, Order, 25 FCC Rcd. 5955 (WCB 2010). Indeed, AT&T Mobility has in the past simply provided administrative notice of its intent to consolidate ETC designations. *See infra* note 21.

this Commission's decisions to re-purpose reclaimed CETC support for its broadband initiatives. Again, Complainant ETCs hope to attain state commission orders that deny Verizon Wireless ETC support, so that this support can flow to the Complainant ETCs – a result the Commission rejected in the *Corr Wireless Order*.

The Complainant ETCs are also appealing, for the same motive, the Universal Service Administrative Company's ("USAC") funding determinations made in connection with Verizon Wireless' quarterly ETC line count submissions under Commission rules 54.307 and 54.802, 47 C.F.R. §§ 54.307 and 54.802. The *USAC Appeal Letter* seeks review, "clarification, and modification (if necessary), of the line count methodology that [USAC] has applied, or plans to apply, to Verizon Wireless in light of the [Commission's] *Corr Wireless Order*."⁷ They want a decision that Verizon Wireless was not entitled to include so-called "legacy" Verizon Wireless customer lines in its affiliates' line counts – a decision that, if ultimately upheld, would recapture Verizon Wireless' support and funnel it to the Complainant ETCs in contravention of the Commission's *Corr Wireless Order*.

Complainant ETCs' request for review of USAC funding determinations is yet another collateral attack on the *Corr Wireless Order*. That order makes clear that high cost support due to Verizon Wireless under "Option B" will be calculated "each quarter based on *current data for that quarter*."⁸ It nowhere states that Verizon Wireless should subtract from its reported line counts the number of Verizon Wireless subscribers as of December 2008, as the *USAC Appeal Letter* requests.⁹ These proposed "modifications" find no support in the *Corr Order* (or any other Commission precedent): the USAC appeal is part and parcel of the Complainant ETCs' attempts to minimize the amount of USF support Verizon Wireless remains eligible to receive and thereby maximize their USF support under the Interim Cap. Although these submissions are directed at the Commission in hopes of securing reversal of the *Corr Wireless Order*, it is clear that the Complainant ETCs also hope to exploit any ambivalence of state regulatory commissions about the effects of that order.

This letter addresses the unwarranted accusations contained in the Lukas Nace submissions and *ex parte* presentations, and urges the Commission to act quickly to deny the Complainant ETCs' USAC disbursement appeal and to re-confirm Verizon Wireless' ETC obligations and continued eligibility for USF support in those areas where Verizon Wireless entities were previously designated as competitive ETCs. Specifically, the Commission should

⁷ *USAC Appeal Letter* at 1. The *USAC Appeal Letter* purports to draw a distinction between the "non-divested areas" in which Verizon Wireless was not required to divest any assets as a condition of merger approval and the "divested areas" which were subject to an interim Management Trust pending Verizon Wireless' required divestiture of certain assets as a condition of merger. It is unclear from the *USAC Appeal Letter* and their other submissions whether the Complainant ETCs also seek to appeal the USF support disbursements made during the period of the Management Trust. See *id.*; see also *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Letter from David A. LaFuria to Marlene H. Dortch, pp. 4-5 n. 13 (filed Dec. 3, 2010). If this is the Complainant ETCs' intent, their arguments are inconsistent with the *Corr Wireless Order* in which the Commission confirmed both that the USF support was appropriately received and that the Management Trust markets are exempt from the phase-down requirement. *Corr Wireless Order*, 25 FCC Rcd. at ¶11 n. 33.

⁸ *Corr Wireless Order*, ¶ 17 (emphasis added).

⁹ See *USAC Appeal Letter* at 4.

provide USAC written guidance to re-confirm (1) that the RCC and Alltel mergers with Verizon Wireless did not affect the ETC designations previously granted to RCC, Alltel or any of the companies' subsidiaries or affiliates; and (2) that Verizon Wireless' ETC-designated subsidiaries and affiliates are entitled under the Commission's universal service funding rules to report and receive high cost support for each subscriber line served by the integrated Verizon Wireless operations in the designated areas.

We also ask the Commission to direct USAC to deny the appeal quickly because, until it does so, the Complainant ETCs will continue to press their case before multiple state commissions in the hope of obtaining rulings that deny Verizon Wireless support. If they win such rulings, they will then demand that USAC make that support available under the state caps for other CETCs. Again, this result is entirely contrary to the Commission's *Corr Wireless Order* and the decision to repurpose support to advance the Commission's broadband initiatives.

The Lukas Nace submissions, *ex parte* presentations and the *USAC Appeal Letter* make three arguments: first, that Verizon Wireless must seek a "new" ETC designation under 47 U.S.C. § 214(e) to continue serving the areas where Verizon Wireless entities were previously designated as competitive ETCs; second, that the existing ETC designations are somehow limited to particular network facilities, subscribers, retail locations or some undefined "market presence"; and, third, that other competitive ETCs must be protected from potential reductions in USF support under the Interim Cap due to Verizon Wireless' continued receipt of support.¹⁰ As explained below, none of these arguments withstands scrutiny.

I. NO "NEW" ETC DESIGNATION IS REQUIRED BECAUSE THE DESIGNATED VERIZON WIRELESS ENTITIES CONTINUE TO SERVE THE SAME AREAS

A. The Commission Directed Verizon Wireless to Continue Serving as a Competitive ETC

There can be no dispute that Verizon Wireless is obligated to continue serving as a competitive ETC in each service area where the Verizon Wireless entities were previously designated, unless and until the Company relinquishes those designations. Indeed, the Commission has already addressed this issue. Opponents of the Verizon Wireless-RCC merger demanded that Verizon Wireless be ordered to continue serving as a competitive ETC in each service area where RCC had been designated. The Commission rejected these demands as entirely unnecessary. In approving the Verizon Wireless-RCC merger, the Commission confirmed that Verizon Wireless remained obligated to provide service as a competitive ETC:

We find that the proposed transaction will not affect the ETC obligations of the companies at issue; the ETC obligations in effect prior to the proposed transaction will remain in effect upon consummation of the proposed transaction. Accordingly, we need not address herein Joint Petitioners' request that Verizon Wireless, upon consummation of the proposed transaction, be required to continue to provide service as a CETC at the same rates and under the same terms and conditions as currently offered by RCC/Unicel.¹¹

¹⁰ See generally *supra* note 2.

¹¹ *RCC Merger Order*, 23 FCC Rcd. at 12516 (emphasis added).

Notably, the Commission cited no exception for any areas in which Verizon Wireless was required to divest assets or subscribers as a condition of merger approval.¹² Likewise, by the time of the Verizon Wireless-Alltel merger, which, like the Verizon Wireless-RCC merger, was also structured as a stock transaction, the Company's obligation to continue serving as a competitive ETC was beyond question and, therefore, was not even raised by opponents of the transaction. Nor did the Commission deem it necessary to restate the obvious. Rather, the Commission proceeded in the *Alltel Merger Order* to impose a phase-down requirement which necessarily relied on the fact that the ETC designations did not terminate upon consummation of the transaction. Indeed, the adoption of the phase-down requirement would have been nonsensical if Verizon Wireless had not been obligated to continue serving the designated areas as a CETC and, thereby, continue to be eligible to receive high cost support.

B. The Commission Directed Verizon Wireless to Expediently Integrate the RCC and Alltel Operations

In keeping with the Commission's directive that Verizon Wireless continue to serve the designated service areas as a competitive ETC, in both merger orders the Commission made clear its further expectation that Verizon Wireless would "expeditiously integrate" the companies' networks and business operations to extend the benefits of "Verizon Wireless" service to all of the Company's subscribers.¹³ The Commission contemplated that certain public interest benefits, especially for rural consumers, would thereby be achieved.¹⁴

Consistent with the Commission's directive to "expeditiously integrate," Verizon Wireless provided early notice of the mergers and offered each of the retained RCC/Alltel subscribers the opportunity to switch to a current Verizon Wireless rate plan. Consequently, a large percentage of these subscribers almost immediately changed their terms of service to take advantage of a Verizon Wireless rate plan. The remaining customers who did not switch to a Verizon Wireless rate plan were subsequently migrated to the Verizon Wireless billing system as the integration process was completed. In either case, it is no longer feasible to separately identify all of the former RCC or Alltel subscribers, or to segregate those customers from other Verizon Wireless subscribers, for universal service purposes.

Verizon Wireless also acted expeditiously to integrate the retained RCC/Alltel network facilities and customer service operations into a unified business operation. The consolidated Verizon Wireless operations now serve the Company's subscribers within the designated ETC service areas. The Company holds itself out to the public and does business in these areas as

¹² Verizon Wireless was required to divest certain assets and subscribers in portions of Vermont and Washington where RCC had been designated as a competitive ETC. *RCC Merger Order*, 23 FCC Rcd. at 12512-12513.

¹³ See, e.g., *RCC Merger Order*, 23 FCC Rcd. at 12508; *Alltel Merger Order*, 23 FCC Rcd. at 17500-17501.

¹⁴ See, e.g., *Alltel Merger Order*, 23 FCC Rcd. at 17495, 17515 (the transaction is likely to result in public interest benefits), 17498-17501 (potential for increased wireless footprint and network coverage), 17502-17507 (potential for expanded and improved services and features, particularly in rural areas), 17507 (potential for expanded roll-out of broadband and next generation services, 17507-17512 (potential for improvements in service quality), 17512-17515 (potential for efficiencies and economies of scale and scope), 17515 (potential for strengthened competition).

“Verizon Wireless” — not under the former Unice! or Alltel brand names.¹⁵ Subscribers are served by the same integrated Verizon Wireless network and business systems, including billing, customer service and technical support. And they have access to the same rates, terms and conditions of service. Consumers therefore recognize and identify Verizon Wireless as a single, consolidated service provider and not as a collection of disjointed affiliated companies.

As an ETC, Verizon Wireless is obligated to offer and advertise the “supported services,” including Lifeline and Link Up assistance, and to provide service upon reasonable request to any consumer residing within the designated “service areas.”¹⁶ The ETC requirements are not limited to the carrier’s network, corporate organization or subscribers that existed as of a certain point in time. Rather, the ETC obligations apply throughout the designated “service area” and apply regardless of whether the network serving the service area was originally constructed by the ETC, a carrier it acquired or a carrier that acquired it.

Similarly, the designated “service area” also “defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.”¹⁷ There is no requirement that an ETC receive support only for subscribers who originally received service from one or another of its integrated subsidiaries. To the contrary, an ETC is eligible to receive USF support for “each line it serves” in the designated service area. To that end, the Commission’s universal service funding rules state:

A competitive eligible telecommunications carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in Sec. 54.5 of this chapter, shall receive support for each line it serves in a particular service area based on the support the incumbent LEC would receive for each such line, disaggregated by cost zone if disaggregation zones have been established within the service area pursuant to Sec. 54.315 of this subpart. A competitive eligible telecommunications carrier serving loops in the service area of a non-rural incumbent local exchange carrier shall receive support for each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line. A competitive eligible telecommunications carrier serving loops in the service area of a rate-of-return carrier shall be eligible to receive Interstate Common Line Support for each line it serves in the service area in accordance with the formula in Sec. 54.901.

* * *

Each Eligible Telecommunications Carrier that is providing service within an area served by a price cap local exchange carrier shall submit to the Administrator, on a quarterly basis ... the number of lines it serves for the period ending three months prior to the reporting date, within each price cap local exchange carrier study area disaggregated by UNE Zone if UNE Zones have been established within that study

¹⁵ Indeed, significant consumer confusion would be caused by the continued identification of the designated ETC as Alltel in those markets where the “Alltel” brand name was acquired, and is currently in use, by Atlantic Tele- Network, Inc., parent company of Allied Wireless Communications Corp. and Commnet Wireless, LLC.

¹⁶ See, e.g., 47 U.S.C. § 214(e)(1); 47 C.F.R. §§ 54.201(d), 54.202(a), 54.405 and 54.411.

¹⁷ 47 C.F.R. § 54.207(a).

area, showing residential/single-line business and multi-line business line counts separately. [...] ¹⁸

Thus, because the integrated Verizon Wireless operations are now responsible for satisfying the ETC obligations throughout the designated service areas, the Company is also authorized to report all of the subscriber lines served by the Verizon Wireless operations for universal service support purposes.

In the course of the integration process, Commission staff confirmed the above requirements. Recognizing that the purpose of the mergers was to fully integrate the RCC, Alltel and Verizon Wireless business operations, Commission staff advised Verizon Wireless that it should treat all of its subscribers within the designated ETC service areas as universal service subscribers, both for purposes of complying with the ETC service obligations, as well as for purposes of reporting the subscriber lines under 47 C.F.R. §§ 54.307 and 54.802.

Consistent with the Commission's orders approving the mergers, universal service rules, and staff guidance, Verizon Wireless therefore implemented practices and procedures to serve all of its subscribers within the designated ETC service areas as universal service customers. And, starting with line count filings in September 2009, it began the process of reporting to USAC "all lines under common ownership or control in the RCC and Alltel designated areas....consistent with guidance from FCC staff."¹⁹

The Commission reaffirmed Verizon Wireless' line count filing process when it implemented the phase-down requirement in the *Corr Wireless Order*. By adopting "Option B," the Commission recognized that Verizon Wireless' eligibility for receipt of universal service support is not limited to the subscriber lines previously served by RCC or Alltel. Rather, the Commission noted that under Option B, Verizon Wireless' line counts could increase and, therefore, "high-cost universal service support will be recalculated each quarter based on current data for that quarter...."²⁰ If that were not the intended outcome, the Commission would have simply limited Verizon Wireless to Option A, which would have capped the Company's eligibility for universal service support based on the line counts and resulting levels of support established at time of the Verizon Wireless-Alltel merger. Simply put, the Complainant ETCs' arguments cannot be squared with the Commission's own decisions.

Because Verizon Wireless' line count filing process is consistent with 47 C.F.R. §§ 54.307 and 54.802, Commission staff guidance, and the *Corr Wireless Order*, the Commission should act quickly to deny the Complainant ETCs' USAC disbursement appeal outlined in the *USAC Appeal Letter* and other submissions and *ex parte* presentations. Specifically, the Commission should provide USAC written guidance re-confirming that Verizon Wireless' ETC-designated subsidiaries and affiliates are entitled to report and receive high cost support for each subscriber line served by the integrated Verizon Wireless operations in the designated areas.

¹⁸ 47 C.F.R. §§ 54.307(a) and 54.802(a) (emphasis added).

¹⁹ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Request for Review by Corr Wireless Communications, LLC, of Decision of Universal Service Administrator*, CC Docket No. 96-45, WC Docket No. 05-337, Letter to Marlene H. Dortch from Tamara Preiss, Attachments 1 and 2 (December 2, 2010).

²⁰ *Corr Wireless Order*, 25 FCC Rcd. at ¶ 17 n. 40 (emphasis added).

C. **Verizon Wireless Sought to Amend the ETC Designation Orders to Reflect the Integration of RCC and Alltel**

As part of the integration process, Verizon Wireless also recognized that certain administrative steps should be taken to amend the earlier ETC designation orders to ensure that the Company's ongoing ETC obligations are clearly reflected in the public record. Verizon Wireless has therefore sought to have a number of the ETC designation orders administratively amended to reflect that it is now the fully integrated Verizon Wireless operations that serve the designated service areas as an ETC.

With respect to the ETC designations granted by this Commission for states in which the public utility commissions do not currently have jurisdiction to designate a wireless carrier as a federal ETC (Alabama, North Carolina, and Virginia), Verizon Wireless filed requests for *pro forma* amendment and consolidation of its ETC designations. Verizon Wireless' requested amendments were summarily granted on May 28, 2010.²¹

Verizon Wireless has also filed requests for *pro forma* amendment and consolidation of ETC designations in several states. Most of the petitions are still pending, but the Arkansas Public Service Commission similarly granted *pro forma* amendment of the Alltel ETC designation order recognizing that "the Alltel and Verizon Wireless networks, business operations, and subscriber bases have been fully integrated as contemplated and approved by the FCC."²²

II. **THE VERIZON WIRELESS ETC DESIGNATIONS ARE NOT LIMITED TO PARTICULAR NETWORK FACILITIES, SUBSCRIBERS, RETAIL LOCATIONS OR "MARKET PRESENCE"**

The Complainant ETCs wrongly contend that Verizon Wireless must obtain "new" ETC designations because the designations were initially granted based on different network facilities, subscribers, retail locations, or some undefined "market presence."²³ The Complainant ETCs' arguments on this point significantly misrepresent the law applicable to ETC designation. The ETC designations are not in any way limited to particular network facilities, subscribers, retail locations or "market presence." As set forth in 47 U.S.C. § 214(e) and the Commission's

²¹ *In the Matter of Federal-State Board on Universal Service, Cellco Partnership d/b/a Verizon Wireless, Petitions for Pro Forma Amendment of Eligible Telecommunications Carrier Designations in the Commonwealth of Virginia and the States of Alabama and North Carolina*, WC Docket 09-197, CC Docket 96-45, Order, 25 FCC Rcd. 5955 (WCB 2010). In contrast to Verizon Wireless' requests for *pro forma* amendment and consolidation of the RCC and Alltel ETC designation orders, AT&T Mobility has in the past simply provided the Commission or USAC notice that it would administratively consolidate its ETC designations for purposes of reporting all AT&T Mobility subscriber lines within the previously separate designated service areas, which did not overlap either in whole or in part prior to consolidation. See, e.g., **Attachments 1 and 2**.

²² *In the Matter of the Application of Cellco Partnership and Its Subsidiaries and Affiliates to Amend Eligible Telecommunications Carrier Designation in the State of Arkansas*, Ark. Pub. Serv. Comm'n Docket No. 10-076-U, Order No. 3 (Oct. 1, 2010) (**Attachment 3**).

²³ See, e.g., *USAC Appeal Letter*, p. 5; *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Letter from David A. LaFuria to Marlene H. Dortch, p. 4 (filed Dec. 3, 2010).

universal service rules, including 47 C.F.R. §§ 54.201, 54.202, 54.405 and 54.411, a carrier seeking ETC designation must (1) demonstrate that it is a common carrier, (2) offer the USF supported services, including Lifeline and Link Up assistance, using its own facilities or a combination of its own facilities and resale of other service, (3) advertise the availability of the USF supported services, and (4) demonstrate compliance with the additional designation requirements set forth in Commission rule 54.202(a). The designating authority must also find that the designation of a competitive ETC for a particular service area is consistent with the public interest. 47 U.S.C. § 214(e).

The findings necessary to designate a competitive ETC are not limited to particular network facilities, subscribers or the “market presence” of the applicant. Rather, the findings are based on a carrier’s demonstration that it has the capability and commitment to satisfy the ETC obligations and requirements.²⁴ The resulting ETC designation does not restrict a carrier from expanding, improving or even selling the network facilities it owned at the time of designation, provided the carrier continues to own facilities and provide the supported services.²⁵ Likewise, the ETC designation is not granted for particular subscribers served by the carrier. There is no restriction that prevents an ETC from acquiring new subscribers either through market competition or through carrier acquisitions, nor is there any restriction on an ETC’s transfer of any customers to another carrier. Finally, the Complainant ETCs’ undefined “market presence” claim similarly lacks legal support. There are no standards or criteria applicable to ETC designations that contemplate “market presence,” much less any subsequent change in a carrier’s “market presence.”

Accordingly, the fact that Verizon Wireless now serves all of its subscribers within the designated service areas through the use of the integrated Verizon Wireless network facilities and operations does not affect the ETC designations. Complainant ETCs’ claim to the contrary – that Verizon Wireless has been improperly including legacy subscribers in its line counts – would effectively mean that Verizon Wireless could not serve as an ETC at all. That result would be flatly at odds with the Commission’s decisions – and would mean that much of the support recaptured from Verizon Wireless would instead flow to the Complainant ETCs despite the Commission’s decision to repurpose the support for broadband.

III. THE COMPLAINANT ETCs’ ALLEGED “HARM” IS IMPROPERLY ASSERTED AND SPECULATIVE AT BEST

What is clear from the Complainant ETCs’ filings both to the Commission and state commissions is that they are unhappy with what they expect will be reduced support that they

²⁴ See *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket 96-45, Declaratory Ruling, 15 FCC Rcd. 15168, 15178 (2000)

²⁵ It has been clear for years that affiliated companies, like the Verizon Wireless operations, enjoy the beneficial use of each other’s facilities for purposes of satisfying the facilities requirement. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776, 8865 (1997) (entities “enjoying the beneficial use of property” may consider that property their own). This principle was recently re-affirmed. See *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, Virgin Mobile*, WC Docket No. 09-197, Order, -- FCC Rcd. --, DA 10-2433, ¶ 15 n. 38 (WCB 2010) (Sprint Nextel’s acquisition of Virgin Mobile means that Virgin Mobile enjoys the beneficial use of Sprint’s facilities and thus satisfies the “own facilities” requirement of section 214(e)(1)).

will receive under the Interim Cap. An alleged reduction in USF support under the Interim Cap is not, however, a valid basis to challenge Verizon Wireless' continued service as a competitive ETC. The submissions and *ex parte* presentations decry Verizon Wireless' continued eligibility to receive USF support based on nothing more than the Complainant ETCs' own economic self-interest. In sum, they complain that Verizon Wireless' provision of service as an ETC to all of its subscribers within the designated service areas, and the consequent reporting of these subscriber lines for universal service purposes, is reducing the amount of USF support available to other competitive ETCs due to the operation of the Interim Cap. The theory that the Commission must protect one carrier's financial interests by excluding another carrier from access to USF support is neither new nor valid.²⁶

Neither the Commission's *Corr Wireless Order* nor Verizon Wireless' continued service as a competitive ETC affects the *Interim Cap Order* or USAC's implementation of that order. Since 2008, any carrier considering ETC designation has understood that the "state-based cap will require newly-designated competitive ETCs to share funding with other competitive ETCs within the state."²⁷ Indeed, the Commission readily acknowledged the financial impact of the Interim Cap on competitive ETCs at the time of its decision and further observed that in some instances the result would leave a competitive ETC with zero USF support.²⁸ The Commission then proceeded in the very same order to grant several pending ETC applications and requests for expansion of existing ETC designations, notwithstanding that such approvals would necessarily reduce the amount of USF support received by other competitive ETCs serving in the same states.²⁹

Setting aside the inherent irony in its present arguments to the Commission, US Cellular, for example, was granted ETC designation in vast portions of New Hampshire, North Carolina, Tennessee and Virginia by operation of the Commission's *Interim Cap Order*.³⁰ Likewise, Allied Wireless Communications, Corp., Commnet Wireless, LLC and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless have each sought ETC designation or expansion subsequent to the establishment of the Interim Cap and, thereby, caused a reduction in the receipt of USF support by other competitive ETCs.³¹ Yet the Complainant ETCs fail to explain why Verizon Wireless'

²⁶ As the United States Court of Appeals for the Fifth Circuit noted in upholding the Commission's early funding decisions, the universal service program cannot discriminate against one carrier to protect another carrier's financial interests because the program "must treat all market participants equally--for example, subsidies must be portable--so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers." *Alenco Communications, Inc. et. al v. Federal Communications Commission*, 201 F.3d 608, 616 (5th Cir. 2000) (emphasis added).

²⁷ *Interim Cap Order*, 23 FCC Rcd. at 8846.

²⁸ *Interim Cap Order*, 23 FCC Rcd. at 8847 ("[E]ven if imposition of the interim cap results in no support for some competitive ETCs, this result is not inconsistent with the Act.").

²⁹ *Interim Cap Order*, 23 FCC Rcd. at 8850 ("Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support. In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission ... These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.").

³⁰ *Interim Cap Order*, Appx. B, 23 FCC Rcd. at 8857-8936.

continued receipt of USF support injures other competitive ETCs, whereas their own ETC designations or expansions do not.

The Complainant ETCs' allegations that a reduction in USF support will somehow "harm" them by inhibiting or preventing the carriers from satisfying their obligations as competitive ETCs is unadulterated speculation. Nowhere in the submissions or *ex parte* presentations do the Complainant ETCs specifically describe how the operation of the Interim Cap will prevent a carrier from being designated as a competitive ETC; how the Interim Cap will prevent a competitive ETC from fulfilling its obligations; or how consumers will be harmed by the intended operation of the Interim Cap.

Moreover, the Complainant ETCs ignore the fact that the Commission has already established a mechanism for relief if, indeed, any of these carriers legitimately believed that its receipt of USF support was insufficient to satisfy the ETC obligations. Recognizing that in certain instances the limitations under the Interim Cap may reduce a competitive ETC's receipt of USF support to less than its cost of service, the Commission has already fashioned a remedy. Specifically, if a competitive ETC believes the amount of USF support available under the Interim Cap is not "sufficient," it can elect to be exempt from the Interim Cap and receive support based on its own cost structure.³² The Complainant ETCs continue to ignore this remedy in their protestations to the Commission, and their inexplicable decision not to avail themselves of this relief demonstrates that the alleged "harm" is purely speculative. Indeed, the D.C. Circuit relied on the existence of this exemption, in part, to reject similarly unsubstantiated claims of financial "harm" raised on appeal of the *Interim Cap Order*:

In any event, petitioners have failed to demonstrate their high-cost support would actually be insufficient under the interim cap. The pertinent question is whether the interim cap will undercut adequate telephone services for customers, since "[t]he purpose of universal service is to benefit the customer, not the carrier." [*Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000)]. Petitioners, however, seem to ignore this fact in their cry for more subsidies, which they have failed to prove are necessary to provide basic service to customers who have none. Petitioners include no cost data showing they would, in fact, have to leave

³¹ See, e.g., *In the Matter of Telecommunications Carriers Eligible to Receive Universal Service Support, Federal-State Joint Board on Universal Service, Allied Wireless Communications Corporation Petition for Eligible Telecommunications Carrier Designations in the State of North Carolina*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd. 12577 (WCB 2010); *Application of Allied Wireless Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Ga. Pub. Serv. Comm'n Docket 31734, Corrected Order Granting ETC Status (Nov. 2, 2010); *In the Matter of the Application of Commnet of Nevada, LLC's Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support*, Nev. Pub. Util. Comm'n Docket No. 08-12017, Compliance Order (Mar. 2, 2009); *Application of Commnet of Nevada, LLC to Expand Its Designation as an Eligible Telecommunications Carrier in the State of Nevada Pursuant to NAC 704.680461*, Nev. Pub. Util. Comm'n Docket No. 10-01011, Compliance Order (April 6, 2010); *In the Matter of the Combined Application of N.E. Colorado Cellular, Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Provider in Additional areas of Colorado*, Colo. Pub. Util. Comm'n Docket No. 07A-153T, Decision No. R08-0523 (May 23, 2008).

³² Pursuant to Section 254 of the Act, the FCC has determined that the federal high-cost universal service support mechanisms must afford "sufficient," but not excessive, support to meet the Act's goals. See *Interim Cap Order*, 23 FCC Rcd. at 8839 and n. 30.

customers without service as a result of the cap and therefore give us no valid reason to believe the principle of “sufficiency,” even viewed in isolation, will be violated by the cap. Furthermore, the Commission created an exception to the cap. To the extent a CETC believes its capped support is insufficient, the Order permits the CETC to obtain an exemption upon “fil[ing] cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC.” [*Interim Cap Order*, 23 FCC Rcd. at 8848]. There is no reason to believe—and petitioners have offered no data proving—that support under the cap will be insufficient.

Rural Cellular Ass’n, 588 F.3d at 1103-04 (emphasis added).

In summary, it is clear that the Complainant ETCs are dissatisfied with the Commission’s decision to deny them access to the USF support reclaimed from Verizon Wireless and Sprint Nextel. It is also clear that the Complainant ETCs’ efforts to generate discord surrounding Verizon Wireless’ continued service as an ETC have succeeded in creating confusion among the state regulatory commissions. The Commission should promptly direct USAC to deny the Complainant ETCs’ meritless Appeal. Quick action will also save the state commissions from expending further scarce resources on proceedings that have been contested solely because the Complainant ETCs saw the opportunity to collaterally attack the Commission’s decisions to serve their own economic self-interest. Specifically, the Commission should provide USAC written guidance to re-confirm (1) that the RCC and Alltel mergers with Verizon Wireless did not affect the ETC designations previously granted to RCC, Alltel or any of the companies’ subsidiaries or affiliates; and (2) that Verizon Wireless’ ETC-designated subsidiaries and affiliates are entitled under the Commission’s universal service funding rules to report and receive high cost support for each subscriber line served by the integrated Verizon Wireless operations in the designated areas.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206. Please contact me if you have any questions.

Sincerely,



Attachments

cc: Zachary Katz	Trent Harkrader
Brad Gillen	Amy Bender
Angela Giancarlo	Ted Burmeister
Angela Kronenberg	Nick Degani
Margaret McCarthy	Patrick Halley
Sharon Gillett	Joseph Cavender
Carol Matthey	

ATTACHMENT 1



Cathy Carpino
General Attorney

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

202.457.3046 Phone
202.457.3073 Fax
cathy.carpino@att.com E-mail

November 5, 2008

Via E-Mail

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

RE: *High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Highland Cellular, LLC (SAC 199002) and AT&T Mobility (SAC 199009) Virginia ETC Designations*

Dear Ms. Dortch:

AT&T Inc. (“AT&T”), on behalf of its wholly-owned affiliates Highland Cellular, LLC (“Highland Cellular”) and AT&T Mobility LLC (“AT&T Mobility”), hereby informs the Commission that it intends to consolidate the above listed eligible telecommunications carrier (“ETC”) designations in Virginia.

In April 2004, Highland Cellular, LLC was designated by the Commission as an ETC in certain areas of Virginia (“Highland ETC Designation”).¹ On November 15, 2007, the Commission approved AT&T’s application to acquire Dobson Communications Corporation (“Dobson”), the parent corporation of Highland Cellular.² In its May 1, 2008, *CETC Cap Order*, the Commission granted AT&T Mobility’s petition to be designated as an ETC in certain areas of Virginia (“AT&T Mobility ETC Designation”).³ The areas for the Highland ETC Designation and the AT&T Mobility ETC Designation do not overlap.

¹ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004).

² *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorization*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007).

³ *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al, Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 9232 (2008) (“*CETC Cap Order*”).

Ms. Dortch
November 5, 2008
Page 2 of 2

Due in large part to operational reasons, AT&T intends to consolidate various Dobson legal entities with current AT&T entities. When this occurs later this year or early next year Highland Cellular will cease to exist as a separate legal entity and instead its assets will be under AT&T Mobility. When this occurs, AT&T Mobility will work with the Universal Service Administrative Company to consolidate Highland Cellular's study area code ("SAC") with AT&T Mobility's SAC.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Cathy Carpino
AT&T Services, Inc.

cc: Jennifer McKee, FCC
Karen Majcher, USAC

ATTACHMENT 2



Cathy Carpino
General Attorney

AT&T Services, Inc.
1120 20th Street NW Ste 1000
Washington, D.C. 20036
Phone (202)457-3046
Fax (202)457-3073
E-mail: cathy.carpino@att.com

May 27, 2010

Karen Majcher
USAC
2000 L St., NW
Suite 200
Washington, DC 20036

Dear Ms. Majcher:

As we discussed several weeks ago, AT&T Mobility is seeking to consolidate several study area codes (SACs) within a single state, which it has accumulated through acquisitions over the past several years. The goal is for AT&T Mobility to reduce the number of SACs to one per state, which, among other things, will enable AT&T Mobility to file just one high-cost line count filing per quarter per state versus the current three or four filings per quarter per state. While we are requesting this consolidation for AT&T Mobility-owned and controlled SACs in Michigan, we intend to request this same consolidation of SACs in several other states via subsequent correspondence. To accomplish this for Michigan, we provide the following information:

Since 2007, AT&T Inc. acquired outright a number of entities that had previously provided service in Michigan and were designated by the State as eligible telecommunications carriers (ETCs). Legacy Dobson Communications had the following subsidiaries in Michigan that were designated as ETCs: American Cellular Corp. (SAC 319012) and Dobson Cellular Systems, Inc. (SAC 319912). The FCC approved AT&T's acquisition of Dobson in an order released on November 19, 2008.¹ The closing date of that transaction was November 15, 2008. Since it acquired Dobson, AT&T Mobility consolidated these two SACs to 319912 and changed the name to New Cingular Wireless PCS, LLC. The State of Michigan also had designated the following legacy Centennial Communications as ETCs: Centennial Michigan RSA 6 Cellular Corp. (SAC 319006); Centennial Michigan RSA 7 Cellular Corp. (SAC 319007); and Michiana Metronet, Inc. (SAC 319008). The FCC approved AT&T's acquisition of Centennial Communications Corp. in an order dated November 5, 2009.² The closing date of that transaction was November 6, 2009.

¹ *Applications of AT&T Inc. and Dobson Communications for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-153, 22 FCC Rcd 20295 (2007).

² *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses and Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, 24 FCC Rcd 13915(2009).

By this letter, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility requests to consolidate to one *new* SAC the following AT&T Mobility owned and controlled SACs in Michigan: SACs 319912, 319006, 319007, and 319008. The new SAC that AT&T Mobility will use exclusively for its operations in Michigan is 319026. We will begin filing line counts with this new SAC in June. We also intend to consolidate the legacy Centennial legal entities with New Cingular Wireless PCS, LLC. Once this occurs (which may happen as early as next month), those legacy Centennial entities will cease to exist as separate legal entities and instead their assets will be under the control of New Cingular Wireless PCS, LLC.³ To facilitate USAC's implementation of this request, we have attached the list of all ILECs and wire centers that are associated with the new SAC. AT&T Mobility will take the requisite steps to ensure that the legacy SACs will flow through to one SPIN. Additionally, AT&T Mobility will also inform the Michigan Commission of this SAC consolidation to ensure that, when the Michigan Commission certifies our compliance with the applicable federal requirements, it will refer to the correct SAC in its certification.

Please do not hesitate to contact me at (202)457-3046 with any questions.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachment

³ We note that in its annual high-cost certification filing to the FCC dated September 28, 2009, which covers calendar year 2010, the Michigan Public Service Commission (Michigan Commission) separately listed the three legacy Centennial entities (along with their associated SACs). It is our understanding that the merely administrative SAC consolidation and legal entity consolidation will have no effect on USAC's disbursements to AT&T Mobility in Michigan (via New Cingular Wireless PCS, LLC and its new SAC, 319026).

ATTACHMENT 3

ARKANSAS PUBLIC SERVICE COMMISSION

ARK. PUBLIC SERV. COMM

SECRETARY OF COMM

2010 OCT -1 P 12: 57

IN THE MATTER OF THE APPLICATION OF)
CELLCO PARTNERSHIP AND ITS)
SUBSIDIARIES AND AFFILIATES TO)
AMEND ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
DESIGNATION IN THE STATE OF)
ARKANSAS)

DOCKET NO. 10-076-U
ORDER NO. 3

FILED
2010 OCT -1 P 12: 57
SECRETARY OF COMM
ARK. PUBLIC SERV. COMM
11/2

ORDER

On August 17, 2010, Cellco Partnership d/b/a Verizon Wireless ("Cellco"), on behalf of itself and its subsidiaries and affiliates offering commercial mobile radio services in the state of Arkansas (collectively, "Verizon Wireless"), filed in this docket its *Application for Amendment of ETC Designation* ("Application"). By its Application, Cellco seeks to amend the Eligible Telecommunications Carrier ("ETC") designation held by Alltel Communications, Inc. and its affiliated legal entities to reflect Cellco and its affiliated legal entities as the ETC designated entity in the state of Arkansas.

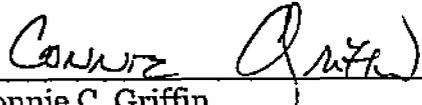
This Commission previously designated Alltel Communication, LLC (formerly named "Alltel Communications, Inc.") ("Alltel") as an Eligible Telecommunications Carrier in the state of Arkansas by Order No. 5 of Docket No. 03-138-U. Expansion of Alltel's service area was granted in Docket 07-028-U. In 2008, Alltel became a wholly-owned, indirect subsidiary of Cellco and collectively operates and does business as Verizon Wireless. As a result of this transaction, the Alltel and Verizon Wireless networks, business operations, and subscriber bases have been fully integrated as contemplated and approved by the FCC. Cellco contends that it is no longer feasible to

distinguish the network, business operations or subscribers of one company from another for ETC compliance and reporting purposes. Cellco states in its Application that it is not seeking to expand the Designated Area granted in these previous dockets.

Cellco's request to amend the ETC designation to reflect Cellco Partnership and its affiliated legal entities operating in the designated area of the state of Arkansas dba Verizon Wireless as the designated entity is hereby approved. Accordingly, the designated service areas of Alltel shall hereafter reflect Cellco Partnership and its affiliated legal entities operating in the designated area of the state of Arkansas dba Verizon Wireless as the ETC designated entity.

BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION,

This 1st day of October, 2010.



Connie C. Griffin
Administrative Law Judge



Jan Sanders, Secretary of the Commission

I hereby certify that this order, issued by the Arkansas Public Service Commission, has been served on all parties of record on this date by the following method:

U.S. mail with postage prepaid using the mailing address of each party as indicated in the official docket file, or
 Electronic mail using the email address of each party as indicated in the official docket file.