

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122

**COMMENTS OF UNITED STATES CELLULAR CORPORATION,
PR WIRELESS, INC. D/B/A OPEN MOBILE, CELLULAR SOUTH, INC.,
MTPCS, LLC D/B/A CELLULAR ONE AND UNION TELEPHONE
COMPANY D/B/A UNION CELLULAR**

United States Cellular Corporation, PR Wireless, Inc. d/b/a Open Mobile, Cellular South, Inc., MTPCS, LLC d/b/a Cellular One and Union Telephone Company d/b/a Union Cellular (collectively referred to herein as the “Wireless Companies”),¹ by counsel, hereby submit these comments in response to the FCC’s Public Notice announcing Verizon Wireless’ (“Verizon”) Petition for Reconsideration (“Petition”) of the letter dated April 1, 2011, from Sharon Gillett, Chief of the Wireline Competition Bureau (“WCB Letter”) providing guidance to the Universal Service Administrative Company (“USAC”) regarding the implementation of carrier-specific caps adopted in the orders approving the AT&T-Centennial and ALLTEL-Atlantis mergers in 2007.²

¹ The Wireless Companies are all commercial mobile radio service (“CMRS”) providers that have been designated as eligible telecommunications carriers (“ETCs”) for purposes of receiving federal high-cost universal service support. Collectively, they serve as ETCs in 22 states. Each serves as an ETC in at least one state in which one or more ALLTEL or AT&T affiliate is an ETC and is thus potentially affected by the outcome of this proceeding.

² See *Comment Sought on Request for Universal Service Fund Policy Guidance Requested by the Universal Service*

I. BACKGROUND AND INTRODUCTION

In the orders approving AT&T's merger with Dobson Cellular and ALLTEL's merger with Atlantis Holdings, LLC, the Commission conditioned its merger approvals, in part, on a cap applicable to each company's high-cost universal service support. Each company's annual support would be capped at the level of support it received as of June 2007.³ These carrier-specific caps would remain in effect until the Commission adopted "comprehensive reforms... to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years."⁴ The carrier-specific caps were not immediately implemented.

In March 2008, the Commission adopted the *Interim Cap Order*, which imposed a cap ("Interim Cap") on all CETC support on a state-by-state basis, capping the total annual amount of CETC support within a state at the amount of support all CETCs in the state were eligible to receive as of March 2008, annualized.⁵

Administrative Company, WC Docket Nos. 05-337, 06-122, CC Docket No. 96-45, FCC Public Notice, DA 09-2117 (rel. Sept. 28, 2009).

³ See *Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee for Consent to Transfer Control of Licenses, Leases and Authorizations, Memorandum Opinion and Order*, 22 FCC Rcd 19517, 19521, para. 9 (2007) ("*ALLTEL-Atlantis Order*"); *Applications of AT&T, Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20329-30, paras. 71-72 (2007) ("*AT&T-Dobson Order*").

⁴ *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521, para. 9. See also *AT&T-Dobson Order*, 22 FCC Rcd at 20330, para. 72 n.214.

⁵ *High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) ("*Interim Cap Order*"), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

Following a USAC request for Commission guidance, the WCB Letter directed USAC to implement the carrier-specific caps retroactively, capping the high-cost support paid to ALLTEL and AT&T at the levels of support they received as of June 2007.⁶ Because the carrier-specific caps were superseded by the Interim Cap adopted in March 2008, USAC was directed to apply the carrier-specific caps for the time period between the consummation of the mergers in November 2007 and August 1, 2008, the effective date of the Interim Cap.

As part of its instructions, the WCB found that this retroactive implementation does not affect the levels of support as of March 2008 which determined the size of the Interim Cap. Specifically, the WCB held:

[N]othing in this letter should be understood to require a recalculation of the amount of the industry-wide cap on high-cost support for competitive ETCs. The interim cap was calculated, properly, without regard to these company-specific caps, and the implementation of the caps now does not alter the proper calculation of the interim cap amount.⁷

Verizon's Petition, among other things, opposes the WCB's holding that the Interim Cap is unaffected by the retroactive implementation of the carrier-specific caps.

II. DISCUSSION

The Wireless Companies take no position on the broader theme of whether the carrier-specific caps should apply retroactively or whether they were nullified altogether by the Interim Cap. However, the Wireless Companies wish to comment on Verizon's incorrect statements

⁶ See WCB Letter at 2.

⁷ *Id.* at 3.

regarding the interplay between the carrier-specific caps and the Interim Cap.

Verizon argues that the retroactive implementation of the carrier-specific caps would result in an adjustment of the March 2008 base cap levels in the affected states, and thus a recalculation of all capped competitive eligible telecommunications carrier (“CETC”) support dating back to the introduction of the Interim Cap in August 2008.⁸ Notwithstanding the WCB’s instruction to the contrary, Verizon asserts that retroactive implementation of the carrier-specific caps would reduce the total support available to competitive ETCs in several states in March 2008, which served as the baseline from which capped statewide amounts are calculated under the Interim Cap.⁹ According to Verizon, this would have the effect of further reducing the support available to competitive ETCs under the Interim Cap, resulting in large negative adjustments to current and prior-period support.¹⁰ Verizon is mistaken.

Absent a rulemaking, the Interim Cap may be adjusted only if there is a change in the amount of support for which CETCs in the state were “eligible” as of March 2008. For example, if a CETC filed line count revisions that decreased the amount of its support in the first quarter of 2008 calculated pursuant to the identical-support rule, and did so within the period established by the Commission,¹¹ this should result in an downward adjustment of the cap in that state. If a

⁸ *See* Petition at 21-22.

⁹ *See id.*

¹⁰ *See id.*

¹¹ On December 10, 2008, the Commission gave CETCs until the end of 2008 to file any corrections affecting the level of eligible support during the March 2008 cap period.

waiver of a line count filing deadline made a CETC retroactively eligible for support in March 2008, the cap for that state would be adjusted upward. The Commission has also directed USAC to adjust the cap where CETCs' eligibility for support in March 2008 was affected retroactively by true-ups under the Local Switching Support and Interstate Common Line Support mechanisms.¹²

By contrast, the carrier-specific caps do not entail a reduction in the amount of support any carrier was *eligible* to receive; rather, the Commission capped the amount of support *paid* to ALLTEL and AT&T. In other words, the amount of support for which ALLTEL and AT&T were eligible in June 2007 will not be changed by the carrier-specific caps; rather, the capped support paid to each company will be *derived* from those eligible amounts. This will most likely be accomplished by means of a reduction factor calculated by dividing (a) the support each company was eligible to receive in June 2007 under the identical-support rule by (b) the amount each company was eligible to receive in the appropriate subsequent month.

The Commission recently made it clear that carrier-specific support reductions adopted as merger conditions do not result in changes to the Interim Cap. In *Corr Wireless*,¹³ – an order with which Verizon was directly involved – the Commission ruled that the voluntary

¹² See letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Karen Majcher, Universal Service Administrative Company, DA 11-243 (Feb. 8, 2011), *petition for reconsideration pending*.

¹³ *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*”).

commitments by Verizon and Sprint to a five-year phase-down of their high-cost support as a condition of approving their respective mergers did not change the amount for which those companies were eligible for purposes of cap calculations:

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.¹⁴

Given the Commission’s holding in *Corr Wireless*, therefore, the amount of support for which AT&T or ALLTEL were eligible in March 2008 will remain unchanged; rather, those companies voluntarily elected to surrender a portion of the support for which they were eligible. Accordingly, implementation of the carrier-specific caps should not, and cannot, result in adjustments to the Interim Cap.

We note that *Corr Wireless* is subject to a petition for reconsideration filed on behalf of multiple CETCs, including the Wireless Companies.¹⁵ On reconsideration, the Commission may overturn its prior determination in *Corr Wireless* that the Verizon and Sprint phase-downs do not affect the amounts for which those carriers were “eligible” to receive support in a given time period. If it so rules, then the Wireless Companies acknowledge that the same principle would

¹⁴ See *id.* at 12858, para. 10.

¹⁵ Joint Petition for Reconsideration, WC Docket No. 05-337, CC Docket No. 96-45 (filed Oct. 4, 2010)

apply in this case.¹⁶ Conversely, if the FCC decides that it must adjust the cap as a result of the carrier-specific caps, then it must overturn *Corr Wireless*, because its outcome depended on the Commission’s holding that the voluntary relinquishment of support by those companies would not change the amount of their “eligible” support for purposes of the Interim Cap.

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¹⁶ Such an outcome would not necessarily justify adjustments to the Interim Cap because of the existence of other significant legal obstacles to adjusting the established March 2008 cap levels. *See* Joint Petition for Reconsideration of the Wireline Competition Bureau’s February 8, 2011, Letter to the Universal Service Administrative Company, WC Docket No. 05-337, CC Docket No. 96-45 (March 10, 2011).

III. CONCLUSION

The Wireless Companies therefore urge the Commission to uphold the determination in the WCB Letter that the retroactive implementation of the carrier-specific caps shall not affect the size of the industry-wide Interim Cap.

Respectfully submitted,



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