

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**OPPOSITION TO PETITION FOR CLARIFICATION OR, IN THE
ALTERNATIVE, FOR RECONSIDERATION OF VERIZON**

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I. Introduction and Summary

Nex-Tech Wireless, LLC, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, The Pioneer Telephone Association, Inc. d/b/a Pioneer Communications, and United Wireless Communications, Inc. (collectively, the “Parties”) hereby oppose the “Petition for Clarification or, in the Alternative, for Reconsideration” (“Petition” or “Verizon Petition”) filed on November 29, 2011 by Verizon Communications Inc. and Verizon Wireless (“collectively, Verizon”) in the above-captioned proceeding.¹ Verizon asserts that the *Verizon Wireless Merger Order* approving the merger between Verizon and Alltel², and Verizon’s 2008 voluntary merger commitment to eliminate its competitive eligible telecommunications carrier (“CETC”) support³, require the FCC to phase-out legacy universal service fund (“USF”) support to Verizon in accordance with the new transition schedule set forth in the *USF-ICC Transformation Order*, rather than the five-year schedule set forth in the *Verizon Wireless Merger Order*. In fact, the *USF-ICC Transformation Order* requires Verizon to continue to phase-down USF support consistent with the schedule set forth in the *Verizon Wireless Merger Order* – which provides

¹ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“*USF-ICC Transformation Order*”), *recon.*, FCC 11-189 (rel. Dec. 23, 2011).

² *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 Declaratory Ruling, 23 FCC Rcd 17444 (2008) (“*Verizon Wireless Merger Order*”).

³ *Ex Parte* Letter from John Scott, Verizon Wireless, dated November 3, 2008 (“*Verizon Ex Parte Letter*”).

that Verizon will receive 20% of its baseline support in 2012 and no support in 2013. Verizon asserts that the *USF-ICC Transformation Order* is not consistent with the *Verizon Wireless Merger Order*, and therefore, is unlawful. Verizon is mistaken.

The fundamental premise of Verizon's arguments is that the *Verizon Wireless Merger Order* "accepted" or "adopted" the portion of the *Verizon Ex Parte Letter* that expressed Verizon's "understanding" that "in the event the Commission adopts a different transition mechanism ... in a rulemaking of general applicability ... then that rule of general applicability would apply instead."⁴ The plain language of the *Verizon Wireless Merger Order* does not support Verizon's premise. The simple fact is that the Commission never adopted or accepted Verizon's "understanding"; instead, the Commission simply recited Verizon's understanding in the text of the *Verizon Wireless Merger Order*. The Commission subsequently made clear in the *Corr Wireless I Order* that USF support to Verizon must be phased down to 0% in 2013 – with no exceptions and no mention of Verizon's "understanding".⁵ The *USF-ICC Transformation Order* follows the same path by requiring Verizon to phase-down USF support to 20% in 2012 and 0% in 2013.⁶ As a result, the *USF-ICC Transformation Order* is entirely consistent with the *Corr Wireless I Order* and not in any manner inconsistent with the *Verizon Wireless Merger Order* – and thus, the *USF-ICC Transformation Order* is entirely lawful and appropriate with regard to the phase-out of USF support for Verizon.

⁴ *Verizon Ex Parte Letter* at 1 - 2.

⁵ *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, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 12854 (2010) ("Corr Wireless I Order").

⁶ *USF-ICC Transformation Order* at ¶ 520.

Moreover, the five year phase out of USF support to Verizon starting in 2009 and ending in 2013 is fully consistent with the Commission’s overarching policy objective of limiting USF support. In light of the Commission’s consistent efforts to limit the amount of USF support, it is difficult to fathom that the Commission would have ever intended to permit Verizon, one of the largest recipients of USF support, to game the system such that Verizon could significantly *increase* its level of support in the wake of a comprehensive rulemaking proceeding designed specifically to reduce the level of such support.

II. The Verizon Wireless Merger Order Does Not Adopt Verizon’s Understanding Regarding the Impact on the Phase-Down of Subsequent Commission Action.

In addressing the continuation of USF support to Verizon, the *Verizon Wireless Merger Order* states at the outset that:

The Federal-State Joint Board on Universal Service ... and the Commission have each recognized and addressed the need to control the explosive growth in high-cost universal service support disbursements to competitive ETCs.”⁷

Clearly, the Commission was focused on reducing USF support. In order to achieve its goal of reducing support, the Commission obtained from Verizon a commitment to phase-out such support by 20% increments over a five-year period beginning in 2009.⁸ In the *Verizon Wireless Merger Order*, the Commission concluded that:

[the] unique facts and large scope of this transaction compel us to condition our approval of the proposed transaction on Verizon Wireless’s commitment to phase down its competitive ETC high cost support over five years⁹

⁷ *Verizon Wireless Merger Order* at ¶ 192.

⁸ *Verizon Ex Parte Letter* at 1 – 2.

⁹ *Verizon Wireless Merger Order* at ¶ 197.

Verizon’s commitment to phase out all USF support by 2013 satisfied the Commission’s overarching policy objective of reducing USF support – and that commitment, set forth in the *Verizon Ex Parte Letter*, which was filed the day before the *Verizon Wireless Merger Order* was approved, was obviously critical to the Commission’s grant of approval for the Verizon Wireless merger transaction to proceed.

In the *Verizon Ex Parte Letter*, Verizon also stated that:

Our understanding is that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other CETCs. In the event that the Commission adopts a different transition mechanism ... in a rulemaking of general applicability ... then that rule of general applicability would apply instead.¹⁰

In the *Verizon Wireless Merger Order*, the Commission acknowledged the language in the *Verizon Ex Parte Letter*:

With regard to this phase-down of competitive ETC high cost support, Verizon Wireless states its *understanding* that ... if the Commission adopts a different transition mechanism ... in a rulemaking of general applicability, then that rule of general applicability would apply instead.¹¹

The Commission’s language is clear: the Commission did not accept or adopt Verizon’s “understanding” – it simply recited the language from Verizon’s letter.

The fundamental premise of Verizon’s Petition is flawed. As set forth above, the Commission simply recited Verizon’s language in the *Verizon Wireless Merger Order*, without accepting or adopting such language. Verizon is incorrect in citing the *Verizon Wireless Merger Order* for the proposition that the Commission, in addressing Verizon’s merger commitment, made a “finding” that a subsequent rule would supersede the phase out commitment,¹² or that the

¹⁰ *Verizon Ex Parte Letter* at 1-2.

¹¹ *Verizon Wireless Merger Order* at ¶ 196 (emphasis added).

¹² Petition at 2, n. 4.

Commission “accepted” the aspect of the merger commitment regarding subsequent rules superseding the phase out commitment,¹³ or that the merger condition “as adopted” included the provision regarding a later rulemaking superseding the phase out condition.¹⁴

In the one instance where Verizon concedes that the Commission “recited” the merger commitment, Verizon asserts in vain that the parenthetical “as discussed herein” in the context of the Commission adopting the phase out condition could only refer to, and somehow adopt, Verizon’s proviso that a later rulemaking would supersede the phase out commitment. The language “as discussed herein” immediately follows the Commission’s adoption of the condition that Verizon must “phase down its competitive ETC high cost support over five years.”¹⁵ The discussion clearly refers to the five year phase out schedule set forth in the preceding paragraph, and not to Verizon’s “understanding” about a later rulemaking superseding Verizon’s phase out commitment.

III. The Corr Wireless I Order Explicitly Reinforces the Binding Nature of the Five Year Phase Out

In its *Corr Wireless I Order*, the Commission “provide[d] clear instructions for implementing Verizon Wireless’ ... [merger] commitments.”¹⁶ The Commission noted that “[t]he 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

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

¹⁵ *Verizon Wireless Merger Order* at ¶ 197.

¹⁶ *Corr Wireless I Order* at ¶ 1.

percent increments.”¹⁷ The Commission provided Verizon and Sprint two options for selecting the baseline to be used for the phase out. Option B – which is the option that Verizon selected – permits Verizon’s high-cost USF support to be recalculated each quarter based on current data for that quarter.¹⁸ Under Option B, the Commission specifically provided that:

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 support for any service areas subject to the merger commitment.¹⁹

Importantly, the Commission determined that “[w]hatever election is made will be binding and will apply for the entire five-year phase-down period.”²⁰

Thus, the *Corr Wireless I Order* explicitly confirms the binding nature of the five year phase-out period. In all events, there is no mention whatsoever in the *Corr Wireless I Order* of the language in the *Verizon Ex Parte Letter* regarding a later rulemaking superseding the five-year phase-out commitment. Moreover, Verizon could have, but chose not to, seek clarification or reconsideration of the *Corr Wireless I Order*.

IV. The USF-ICC Transformation Order Further Reinforces the Binding Nature of the Five Year Phase-Out Period

The *USF-ICC Transformation Order* follows precisely the same path set forth in the *Verizon Wireless Merger Order*, and reinforced in the *Corr Wireless I Order*, by requiring Verizon to phase-down USF support to 0% in 2013. Specifically, the Commission stated:

We note that Verizon Wireless and Sprint will continue to be subject to the phase-down commitments they made in the November 2008 merger Orders. Consistent

¹⁷ *Id.* at ¶ 15.

¹⁸ *Id.* at ¶ 17.

¹⁹ *Id.*

²⁰ *Id.* at ¶ 15 (emphasis added).

with the process we set forth in the *Corr Wireless Order*, their specific phase downs will be applied to the revised rules of general applicability we adopt today. As a result, each carrier will have its baseline support calculated based on disbursements, with a 20 percent reduction applied beginning July 1, 2012. *** Verizon Wireless, which elected Option B, will, in 2012, have an 80 percent reduction applied to the support it would otherwise receive. In 2013, neither carrier will receive the phase down support, consistent with the commitments.²¹

The *USF-ICC Transformation Order* is entirely consistent with the *Corr Wireless I Order* and not in any manner inconsistent with the *Verizon Wireless Merger Order* – and thus, the *USF-ICC Transformation Order* is entirely lawful with regard to the phase-out of USF support for Verizon in 2013.

V. The Commission’s Overarching USF Policy Goals Fully Support the Phase Out of All Support to Verizon in 2013

The Commission has sought for many years to reduce the growth in USF support. In the *Interim Cap Order*, the Commission capped support to CETCs at March 2008 levels.²² In the *Verizon Wireless Merger Order*, the Commission obtained from Verizon, and adopted into its Order, a commitment to phase-out the receipt of all USF support by 2013. In the *Sprint Merger Order*, the Commission obtained from Sprint, and adopted into its Order, a commitment to phase-out the receipt of all USF support by 2013.²³ In the *Corr Wireless I Order*, the Commission determined that the USF support surrendered by Verizon and Sprint should not be distributed to other CETCs, but instead should be “reserved as a potential down payment on

²¹ *USF-ICC Transformation Order* at ¶ 520.

²² See *High-Cost Universal Service Support*, Order, 23 FCC Rcd. 8834, 8850 (2008) (“*Interim Cap Order*”), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

²³ *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of License, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008) (“*Sprint Merger Order*”).

proposed broadband universal service reforms....”²⁴ Finally, in the *USF-ICC Transformation Order*, the Commission adopted a comprehensive plan to rationalize and limit the amount of high-cost USF support available to all carriers.

In light of the Commission’s consistent efforts to limit the amount of USF support, it is difficult to fathom that the Commission would have ever intended to permit Verizon, one of the largest recipients of USF support, to game the system such that Verizon could *increase* – let alone significantly increase – its level of support in the wake of a comprehensive rulemaking proceeding designed specifically to reduce the level of such support.²⁵ Yet, that is exactly what Verizon is seeking: a dramatic increase in USF support.

Verizon collected approximately \$144 million of high-cost USF support in 2011, after the 60% phase-down of support.²⁶ For 2012, Verizon would be expected to receive approximately \$72 million, after the 80% phase-down of support, and for 2013, Verizon would receive zero support.

If Verizon has its way, its support would be frozen at the 2011 level of \$144 million. From 2012 – 2016, Verizon would collect the following amounts of high-cost support:

²⁴ *Corr Wireless I Order* at ¶ 1.

²⁵ It is also difficult to imagine that the Commission would have put into place a phase down regime that would have resulted in such different outcomes for Sprint and Verizon. Because Sprint elected Option A (a fixed baseline) pursuant to the *Corr Wireless I Order*, and because Sprint has subsequently relinquished many of its ETC authorizations, Sprint would have a much smaller benefit than Verizon if the FCC were to permit both carriers to collect USF support in 2013 and beyond.

²⁶ This calculation was based on the capped and phased-down 4Q2011 support projections in USAC Appendix HC01 for all Verizon entities that are subject to the phase-down. Full-year USAC data was not used because there were substantial adjustments in some prior quarters, and it cannot be determined whether these adjustment apply only to 2011 or whether they apply to prior years as well.

Time Period	Calculation of Support	Projected Support
2012	100% for H1; 80% for H2	\$130 million
2013	80% for H1; 60% for H2	\$101 million
2014	60% for H1; 40% for H2	\$72 million
2015	40% for H1; 20% for H2	\$43 million
2016	20% for H1; 0% for H2	\$14 million
TOTAL		\$360 million

If the Mobility Fund Phase II is not in place by June 30, 2014, support would be frozen at that 60% level, and the total projected support to Verizon would rise to nearly \$492 million.

The bottom line is that Verizon’s USF support would increase from \$72 million to at least \$360 million, or as much as \$492 million..

VI. The Justification for the Phase Down of CETC Support Adopted in the *USF-ICC Transformation Order* is Wholly Inapplicable to Verizon

In adopting a five year phase down period, beginning July 1, 2012, the Commission found that such a transition “is desirable in order to avoid service shocks to service providers that may result in service disruptions for consumers.”²⁷ Pursuant to the *Verizon Wireless Merger Order*, Verizon is already well into the orderly five year phase down of its USF support. As of the adoption of the *Verizon Wireless Merger Order* on November 8, 2008 – more than three years ago – Verizon knew full well the schedule for the phase down of its support and that, as of January 1, 2013, it would no longer be receiving any support. Verizon does not need more time to adjust – it has already been given a period of five years – the same period of time now given

²⁷ *USF-ICC Transformation Order* at ¶ 513.

to other CETCs to phase out USF support. It strains credulity for Verizon to argue now that the original five year phase-out “would be untenable and would unlawfully disadvantage Verizon in a unique way.”²⁸

Moreover, in the *USF-ICC Transformation Order*, the Commission found that Verizon and Sprint do need even need USF high-cost support in order to serve the nation’s rural communities, noting:

Under 2008 commitments to phase down their competitive ETC support, Verizon Wireless and Sprint have already given up significant amounts of the support they received under the identical support rule, and there is nothing in the record showing that either carrier is reducing coverage or shutting down towers even as this support is eliminated. *** We therefore find that it reasonable to assume that the four national carriers will maintain at least their existing coverage footprints even if the support they receive today is phased out.²⁹

VII. Conclusion

The phase out of support to Verizon set forth in the *USF-ICC Transformation Order* is entirely consistent with the *Corr Wireless I Order* and not in any manner inconsistent with the *Verizon Wireless Merger Order* – and thus, the *USF-ICC Transformation Order* is entirely lawful. In addition, the five year phase out of USF support to Verizon – starting 2009 and ending in 2013 – is fully consistent with the Commission’s overarching policy objective of

²⁸ Petition at 2.

²⁹ *USF-ICC Transformation Order* at ¶ 495.

limiting USF support. For these reasons, the Commission should deny Verizon's Petition in its entirety.

Respectfully submitted,

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