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Docket No. 33387

**In Re: Petition for Expedited Declaratory Ruling Regarding the Filing of Unauthorized Line Counts by Cellco Partnership d/b/a Verizon Wireless For Purposes of Receiving High-Cost Support From the Federal Universal Service Fund**

**ORDER ON JOINT PETITION FOR DECLARATORY RULING**

**I. Factual and Procedural Background**

Allied Wireless Communications Corporation ("Allied") and Georgia RSA #8 Partnership (collectively "Petitioners") filed a Joint Petition for expedited declaratory ruling before the Georgia Public Service Commission on January 21, 2011. Petitioners seek to prevent Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") from claiming "legacy" subscriber lines in Georgia (i.e., lines that comprised Verizon Wireless' customer base in Georgia before its acquisition of Alltel Communications, Inc. ("Alltel") for the purpose of receiving high-cost support from the Universal Service Fund ("USF"). Petitioners allege that Georgia will lose \$7.73 million in annual high-cost support to providers in rural areas if Verizon Wireless is permitted to treat the lines as eligible for USF support.

Verizon Wireless acquired Alltel in November 2008. Alltel operated in several areas of Georgia and was designated by the Commission as an Eligible Telecommunications Carrier ("ETC") in October 2007. Verizon Wireless also served areas in Georgia prior to the acquisition of Alltel, but has never been designated by the Commission as an ETC. As part of the merger of Verizon Wireless and Alltel, the Federal Communications Commission imposed a condition requiring Verizon Wireless to forgo high-cost USF support for Alltel areas it retained in 20% phase-down increments for five years ending in 2012. Verizon Wireless was also required to divest Alltel's network assets and licenses in several areas within Georgia, including Georgia RSA Nos. 6 through 11 and 13, which were transferred to Allied.

In the meantime, the FCC issued two orders, the *Interim Cap Order*<sup>1</sup> in August 2008 and the *Corr Wireless Order*<sup>2</sup> in September 2010. In the *Interim Cap Order*, the FCC imposed a cap

<sup>1</sup> *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).

on support to competitive ETCs in each state so that each ETC was required to share a fixed amount of support equal to the amount all ETCs in the state were eligible to receive during March 2008, on an annualized basis. Hence, a reduction in support for one ETC meant that more support would be available to the remaining ETC in that state. In the *Corr Wireless Order*, the FCC made an exception to the interim cap whereby Verizon Wireless' phase-down of support would not be made available to other ETCs, but instead would be held by the FCC and used for broadband universal service reforms.

In early 2009, Petitioners allege that Verizon Wireless began counting its "legacy" subscriber lines, including lines in divested areas, and reporting the counts to the Universal Service Administrative Company ("USAC") for increased USF funding despite never being designated as an ETC in Georgia. The Petitioners allege that Verizon Wireless' line counts in Georgia increased by 79%, and in some rural areas the line counts nearly tripled. The increased line counts allegedly amounted to tens of millions of dollars of increased USF funding.

The Petitioners make three requests of the Commission: (1) suspend Verizon Wireless' eligibility to draw support from the high-cost fund by informing USAC that Verizon Wireless is under investigation; (2) declare that Verizon Wireless was never designated as an ETC in Georgia and that Verizon Wireless must first be designated to report "legacy" lines and receive USF funding; and (3) notify USAC that Verizon Wireless has not been designated as an ETC in Georgia and that Verizon Wireless "legacy" lines are not eligible for high-cost USF funds.

Verizon Wireless filed a Response to the Petition on February 2, 2011 and raised several arguments. First, Verizon Wireless contends that the Petition is defective because it fails to conform to the requirements of Rule 515-2-1-.12. Second, Verizon Wireless also contends that the relief requested is pre-empted by federal law and FCC USF rules. Specifically, Verizon Wireless argues that Petitioners' grievances were addressed in the FCC's *Interim Cap Order* and 47 C.F.R. §§ 54.307 and 54.802, and that Petitioners must pursue USAC and FCC review. Third, Verizon Wireless contends that Alltel's lines and Verizon Wireless' "legacy" lines are now fully integrated and cannot be separated for identification. Finally, Verizon Wireless argues that expedited review is not warranted because USF funds can be redistributed at a later time if errors are found and the Petitioners already have opportunities for review through the FCC.

Staff requested that the parties present any factual disputes to the Commission by February 7, 2011. In response, the parties did not present any specific factual disputes requiring a hearing other than the legal arguments noted above.

On February 9, Public Service Telephone petitioned for intervention, and filed comments encouraging the Commission to request that the USAC audit Verizon Wireless to determine the amount of federal universal service support it has received for the State of Georgia and any other state for which Verizon Wireless claimed support prior to obtaining ETC designation.

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<sup>2</sup> *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).

## II. Jurisdiction

The Commission has general jurisdiction over telephone and telecommunications companies under O.C.G.A. § 46-1-1 *et seq.*, 46-2-20 and 46-2-23. In addition, the Commission administers the Georgia Telecommunications and Competition Development Act, O.C.G.A. § 46-5-160 through 174. Furthermore, pursuant to Section 214(e)(2) of the Federal Telecommunications Act, state commissions are authorized to designate common carriers as eligible telecommunications carriers. The Commission is authorized “to act in accordance with federal laws or regulations of the Federal Communications Commission.” O.C.G.A. § 46-5-222(b)(3).

The Administrative Procedure Act, O.C.G.A. § 50-13-1 through 23, directs agencies to provide by rule for the filing and prompt disposition of petitions for declaratory rulings. O.C.G.A. § 50-13-11. The Commission’s duly promulgated Rule 515-2-1-.12 identifies what must be included in a petition for declaratory ruling, sets forth the requirements for service on interested parties and establishes that no evidentiary hearings shall be held if there is no dispute as to any material fact.

## III. Conclusions of Law

Staff recommended that the Commission conclude that it has not designated Verizon Wireless as an ETC in Georgia. Furthermore, Staff recommended that the Commission conclude that its orders do not authorize Verizon Wireless to receive high cost funding from the universal service fund in relation to its “legacy” Verizon Wireless customers in Georgia. Finally, Staff recommended that the Commission provide a certified copy of its order on the Joint Petition to USAC. For the reasons set forth below, the Commission adopts the Staff’s recommendation.

Verizon Wireless argued that the Petition for Declaratory Ruling was procedurally defective because it did not comply with Commission Rule 515-2-1-.12, which provides that a petition for a declaratory ruling must state the following:

- (a) The name and post office address of the petitioner;
- (b) The full text of the statute, rule, order upon which a ruling is requested;
- (c) A paragraph statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute or rule;
- (d) Petitioner's contention, if any, as to the aforesaid applicability with citations of legal authorities, if any, that authorize, support, or require a decision in accordance therewith;
- (e) A statement setting forth in detail the petitioner's interest in the matter and why and how the petitioner is uncertain or insecure with respect to his rights. The petition shall be verified under oath by, or in proper behalf of, the petitioner.

The Petition includes the name and address of counsel for the Joint Petitioners. The Petition includes the full text of 47 U.S.C. § 214(e)(2), which is the provision upon which the Joint

Petitioners seek clarification. (Joint Petition, p. 1). The Petition includes a statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute or rule. *Id.* at 3-15. The Petition includes an argument that 47 U.S.C. § 214(e)(2) applies because this code section sets forth the authority of state commissions to designate carriers as ETCs. Joint Petitioners contend that this Commission did not designate Verizon Wireless as an ETC, and that, therefore, Verizon is not authorized to receive USF funding with regard to its “legacy” customers in Georgia. *Id.* at 11-15. Joint Petitioners also explain the potential impact of this issue on the ability of other ETCs in Georgia to build out their networks in Georgia. Specifically, the Petition alleges that the increases in the number of lines that Verizon Wireless has claimed as eligible for USF support have resulted in cap reductions to other ETCs in this state. *Id.* at 13-14. On February 9, 2011, the Joint Petitioners supplemented their initial filing with a verification under oath. Therefore, the Commission agrees with and adopts the Staff’s finding that the Petition for Declaratory Ruling is not procedurally deficient.<sup>3</sup>

Independent of the Joint Petition, it is within the Commission’s authority to clarify that it has not authorized Verizon Wireless to receive ETC funding from the USF in connection with its “legacy” customers. The Commission is authorized to designate a common carrier as an ETC provided that it meets the standards set forth in applicable law. 47 U.S.C. § 214(e)(2). Georgia law expressly preserves the Commission’s authority to act “in accordance with federal laws.” O.C.G.A. § 46-5-222(b)(3). The Commission is charged with considering the public interest when designating additional ETCs for rural areas. *Id.* The Commission has not designated Verizon Wireless as an ETC pursuant to 47 U.S.C. § 214(e)(2), and did not make any public interest findings with regard to Verizon Wireless being designated as a ETC in Georgia.

Verizon Wireless contends that the Petitioners’ request is a collateral attack on the FCC’s federal universal service funding decisions. (Response, p. 5). However, a decision by a state commission explaining the actions that it took, or did not take, under 47 U.S.C. § 214(e)(2) is not a collateral attack on such FCC decisions.

In addition, Verizon Wireless charges that the line counting and USF support disputes are federal law issues that are outside of this Commission’s jurisdiction. The Staff recommendation that the Commission is adopting does not involve a determination by this Commission of a specific number of high cost lines for which Verizon Wireless is entitled to receive high cost funding from the USF. Similarly, the Commission is not identifying the specific dollar amount that Verizon Wireless is due from the fund. Instead, consistent with Staff’s recommendation, the Commission is merely clarifying that it has not authorized Verizon Wireless to receive USF funding related to its “legacy” customers.

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<sup>3</sup> Commission Rule 515-2-1-.12(4)(b) provides that the Commission is not precluded from acting upon informal requests for clarification on the applicability of a statute. Therefore, even if the Joint Petition failed to satisfy the requirements of the Commission rule, the Commission may nonetheless deem it appropriate to act upon it.

**IV. Ordering Paragraphs**

**WHEREFORE, IT IS ORDERED**, that the Commission concludes that it has not designated Verizon Wireless as an ETC in Georgia.

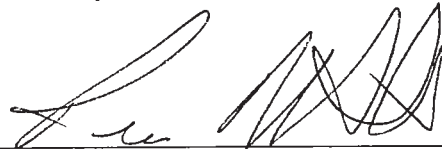
**ORDERED FURTHER**, that the Commission conclude that its orders do not authorize Verizon Wireless to receive high cost funding from the universal service fund in relation to its “legacy” customers in Georgia.

**ORDERED FURTHER**, that the Commission will provide a certified copy of this order on the Joint Petition to USAC.

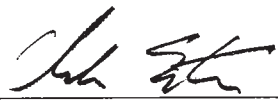
**ORDERED FURTHER**, a motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER**, jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders, as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 21<sup>st</sup> day of February 2011.

  
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Reece McAlister  
Executive Secretary

2/21/11  
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Date

  
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Chuck Eaton  
Vice-Chairman

2/21/11  
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Date