

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Verizon Wireless Petition for Limited Waiver of Safe Harbor Single Election Requirement and Criteria for Consolidated Filing of Universal Service Revenue Reports)	

ORDER

Adopted: February 1, 2010

Released: February 1, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request by Verizon Wireless for a limited extension of waivers of certain universal service FCC Form 499 reporting requirements previously granted by the Wireline Competition Bureau (Bureau).¹ Specifically, as described below, we extend temporary waivers of universal service revenue reporting requirements to allow Verizon Wireless to file a consolidated revenue data report for affiliated entities it acquired in its mergers with Alltel Corporation (Alltel) and Rural Cellular Corporation (RCC) and to report revenues for all affiliated companies using a weighted average of actual and safe harbor revenues.² We find that good cause exists to extend these waivers due to special circumstances arising out of the Commission's pending review of divestiture issues related to Verizon Wireless's merger.³

¹ Letter from Tamara L. Preiss, Verizon Wireless, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 09-197 (filed Jan. 13, 2010) (Verizon Wireless Extension Request Letter); *Universal Service Contribution Methodology; Verizon Wireless Petition for Limited Waiver of Safe Harbor Single Election Requirement and Criteria for Consolidated Filing of Universal Service Revenue Reports*, WC Docket No. 06-122, Order, 23 FCC Rcd 5212, 5214-16, paras. 5-8 (Wireline Comp. Bur. 2009) (*Verizon Wireless Consolidated Filing Order*).

² 47 C.F.R. § 54.711; Telecommunications Reporting Worksheet, FCC Form 499-Q Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms, 7-8 (2009) (FCC Form 499-Q Instructions), <http://www.fcc.gov/Forms/Form499-Q/499q.pdf>; Telecommunications Reporting Worksheet, FCC Form 499-A Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms, 8-9 (2009) (FCC Form 499-A Instructions), <http://www.fcc.gov/Forms/Form499-A/499a-2009.pdf>.

³ See *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 Order and Declaratory Ruling, 23 FCC Rcd 17444, 17516-21, paras. 157-70 (2008). Pursuant to the consent decree and related orders governing both the RCC and Alltel acquisitions, the divestiture markets must be operated as independent, ongoing, and competitive businesses until the markets are sold. See, e.g., *United States of America v. Verizon Commc'ns Inc.*, Case 1:08-CV-01878-EGS, Preservation of Assets Stipulation and Order, at 15 (D.D.C., Dec. 9, 2008).

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (the Act) mandates that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁴ The Commission has established, in a series of separate proceedings, procedures to fund universal service support mechanisms based on end-user revenues.⁵ In the *Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to compute their universal service fund contributions, and required contributors to report their end-user telecommunications revenues to the Universal Service Administrative Company (USAC) in accordance with the instructions and requirements set forth in the Telecommunications Reporting Worksheet (FCC Form 499).⁶

3. The Commission has adopted a number of orders to reduce the administrative burdens for certain categories of contributions. For example, the Commission allows wireless carriers to report their revenues based on a safe harbor percentage that approximates the percentage of interstate revenue generated by each category of wireless telecommunications provider.⁷ The safe harbor was adopted to minimize administrative burdens for those wireless providers that asserted that they could not identify, without substantial difficulty, the amount of their revenues that are interstate as opposed to intrastate.⁸ In addition, the Commission adopted a rule that allows wireless providers to report revenues on a consolidated basis if they meet ten specific conditions.⁹

⁴ 47 U.S.C. § 254(d). The Commission adopted the additional principle that the federal support mechanism should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801-03, paras. 46-51 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁵ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd 8776; *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration, Eighth Report and Order, and Sixth Report and Order, 15 FCC Rcd 1679, 1685, para. 15 (1999) (establishing a single contribution for all universal service support mechanisms based on interstate and international revenues).

⁶ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, Appendix B (1997) (*Second Order on Reconsideration*). Telecommunications carriers are required to file the Telecommunications Reporting Worksheet quarterly (FCC Form 499-Q) and annually (FCC Form 499-A). 47 C.F.R. § 54.711(a); see also FCC Form 499-A Instructions and FCC Form 499-Q Instructions.

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21257, para. 11 (1998) (*First Wireless Safe Harbor Order*). This is known as the single election requirement.

⁸ *Id.* at 21255, para. 6.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 99-200, 95-116, 98-170, NSD File No. L-00-72, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3802, paras. 199-20 (2002). Consolidated filing is permitted only if the filing entity certifies that all of the following conditions are met: (1) a single entity oversees the management of the affiliated systems; (2) a single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities; (3) all revenues are posted to a single general ledger; (4) to the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books; (5) customers have a single point of contact; (6) the consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities; (7) the consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities; (8) the consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal

4. *Verizon Wireless Limited Waiver Request.* On April 20, 2009, Verizon Wireless filed a petition requesting that the Commission temporarily waive the single election and consolidated filing requirements.¹⁰ In the *Verizon Wireless Consolidated Filing Order*, the Bureau granted Verizon Wireless's request in part, finding that the technical limitations of the legacy systems of Alltel and RCC, as well as the stipulations of the merger consent decree and related orders, provided good cause to justify grant of the limited waivers.¹¹ The Bureau waived the single election and consolidated filing requirements through December 31, 2009, so that Verizon Wireless could integrate the billing and traffic-reporting systems of the properties it was retaining into its existing systems and divest the remaining properties.¹²

5. Since the release of the *Verizon Wireless Consolidated Filing Order*, Verizon Wireless has migrated all former Alltel and RCC customers onto its billing platform in the markets it has retained and no longer seeks a waiver of the reporting requirements as to those properties.¹³ Verizon Wireless has not yet, however, divested itself of certain Alltel and RCC properties although it has applications to do so pending before the Commission.¹⁴

6. On January 13, 2010, Verizon Wireless asked the Bureau to extend the previously granted waivers of the specific universal service FCC Form 499 reporting requirements insofar as they would apply to the to-be-divested properties.¹⁵ Pursuant to the conditions of Verizon Wireless's mergers with Alltel and RCC, Verizon Wireless cannot integrate these properties into its system, but the Divestiture Trustee must instead run them as independent, ongoing, and competitive businesses until divestiture.¹⁶

entities; (9) the consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and (10) the consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments. FCC Form 499-Q at 7–8; FCC Form 499-A at 8–9.

¹⁰ Verizon Wireless Petition for Limited Waiver of Safe Harbor Single Election Requirement and Criteria for Consolidated Filing of Universal Service Revenue Reports, WC Docket No. 06-122 (filed Apr. 20, 2009) (Verizon Wireless Petition).

¹¹ 23 FCC Rcd at 5215, paras. 6–7.

¹² *Id.* at 5216, para. 8.

¹³ Verizon Wireless Extension Request Letter at 2.

¹⁴ *Id.* On May 22, 2009, Verizon Wireless applied to divest certain properties by selling them to AT&T, and on June 16, 2009, Verizon Wireless applied to divest the remaining properties by selling them to Atlantic Telecom Network. *Id.*; see *AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Public Notice, 24 FCC Rcd 8171 (WTB 2009); *Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-199, Public Notice, 24 FCC Rcd 9035 (WTB 2009).

¹⁵ *Id.* Under the Commission's default filing-period rules, oppositions to Verizon Wireless's request were due January 25, 2010, and replies were due February 1, 2010. See 47 C.F.R. § 1.45(b)–(c). No parties opposed Verizon Wireless's request.

¹⁶ Verizon Wireless Extension Request Letter at 2 n.4.

III. DISCUSSION

7. We find that Verizon Wireless has demonstrated that good cause exists to extend the limited waivers granted in the *Verizon Wireless Consolidated Filing Order* insofar as they apply to the to-be-divested properties.¹⁷ As discussed below, permitting Verizon Wireless to file a consolidated report and to report revenues based on a weighted average of actual and safe harbor revenues is warranted due to special circumstances arising out of the Commission's pending review of divestiture issues related to Verizon Wireless's merger.

8. Regarding the single-election requirement, Verizon Wireless reports that it is ready and able to report actual interstate revenues for all the properties it has retained but cannot do so for the properties it must divest because the legacy Alltel and RCC systems are not capable of capturing the needed traffic data.¹⁸ Forcing Verizon Wireless to rely on the safe harbor for all of its properties would allow the legacy systems of properties that Verizon Wireless will not retain to dictate the policy for the entire company, likely requiring Verizon Wireless to over-report the company's revenues on its FCC Forms 499 until divestiture is complete. We find that this result would be inconsistent with the principle of section 254 of the Act that universal service contributions be equitable.¹⁹ Under these special circumstances, we find that Verizon Wireless's request to continue to use a safe harbor for its to-be-divested properties and to report its aggregate revenues using a weighted average of actual and safe harbor revenues is warranted.

9. We also find that good cause exists to permit Verizon Wireless to file consolidated FCC Forms 499 that include the to-be-divested properties even though the merger conditions require that customers in those areas cannot and will not receive bills identifying Verizon Wireless as their service provider or providing a single point of contact.²⁰ Consistent with our findings in the *Verizon Wireless Consolidated Filing Order*, we conclude that allowing Verizon Wireless to file a single report for all of its acquired entities within the divestiture markets is consistent with the public interest because it will promote "efficient administration of the universal service support mechanisms."²¹ We therefore extend the waiver of the requirement that customers of all affiliated entities receive bills under a single trade name and have a single point of contact, insofar as the requirement applies to the to-be-divested properties, until such time as the Commission acts on the pending divestiture applications.

¹⁷ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver). In addition, the Bureau "may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms." 47 C.F.R. § 54.711(c).

¹⁸ Verizon Wireless Extension Request Letter at 2.

¹⁹ 47 U.S.C. § 254(d).

²⁰ Verizon Wireless Extension Request Letter at 2 n.4.

²¹ 47 C.F.R. § 54.711(c).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that Verizon Wireless's request to extend its previously granted waiver IS GRANTED to the extent described herein.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b) of the Commission's rules, 47 C.F.R. §§1.102(b), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau