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September 30, 2003

VIA ELECTRONIC FILING

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

**Re: CC Docket No. 96-45
Highland Cellular, Inc.
Petition for Designation as an ETC in the Commonwealth of Virginia**

Dear Madam Secretary:

On behalf of Highland Cellular, Inc. ("Highland"), we have enclosed data requested by the Commission concerning the population density within certain areas served by nonrural carriers. While Highland is pleased to provide this information to assist the Commission, it appears that an analysis of competitive entry into areas served by non-rural carriers is inappropriate under Section 214 of the Act and Part 54 of the Commission's rules.

The Communications Act makes clear that the Commission shall designate competitive ETCs in areas served by nonrural carriers if they can provide the supported services.¹ The Commission has, on several occasions, reiterated that designation of a competitive ETC ("CETC") in nonrural areas *per se* serves the public interest.² In our experience, neither the FCC nor any state has ruled by final order that a public interest analysis is properly performed in areas served by nonrural telephone companies. Moreover, the Act provides for service area redefinition for rural ILEC service areas only.³

¹ 47 U.S.C. § 214(e)(6).

² See, e.g., *Pine Belt Cellular, Inc., Memorandum Opinion and Order*, 17 FCC 9589, 9594 (Wir. Comp. Bur. 2002) citing *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order*, 15 FCC Rcd 39 (Com. Car. Bur. 2000). Although these orders were made under delegated authority, their respective review periods have expired and therefore the orders "have the same force and effect as actions taken by the Commission." 47 C.F.R. § 0.5(c).

³ 47 C.F.R. § 214(e)(5).

In some cases, including this one, the Commission has requested population density data for wire centers of rural telephone companies to examine whether uneconomic support would accrue to a CETC. Presumably, that analysis is related to the Joint Board's recommendation regarding whether a CETC is engaging in "cream skimming" of a rural ILEC service area. However, the Commission has never before looked to these statistics in a nonrural setting. That is because Congress deliberately allowed the Commission, when acting pursuant to Section 214(e)(6), to establish a CETC service area in portions of nonrural ILEC study areas without the need to redefine those areas.⁴ As a result, the Joint Board's "cream skimming" analysis applies only to areas served by rural ILECs.⁵

From a practical perspective, it does not appear possible for Highland to "cream skim" the nonrural ILEC service areas in question. As the attached chart shows, the small portion of Verizon Virginia's Honaker wire center that is within Highland's proposed ETC service area is less densely populated than the portion outside of its proposed ETC service area. Moreover, Highland will receive *zero* high-cost support for the sliver of nonrural ILEC service territory it covers. Highland will only receive small amounts of Interstate Access Support, which is already disaggregated among ILEC cost zones.⁶ This provides further assurance that Highland will not receive uneconomic levels of support in those areas.

Highland has taken note of Verizon's various requests that the Commission limit IAS portability. Those issues are outside the scope of ETC designation proceedings and should be dealt with in an appropriate forum where all interested parties may properly participate.⁷

⁴ 47 U.S.C. § 214(e)(5) ("The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company"). *See also* 47 C.F.R. § 54.207(b).

⁵ *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8880-83 (1997). Other than instances in which a carrier is deliberately targeting low-cost areas to receive uneconomically high levels of support, we believe an analysis of the potential for "cream skimming" is not properly included in the Section 214(e)(5) public interest analysis – even assuming the public interest analysis were applicable to areas served by nonrural ILECs.

⁶ *See* Supplement to Petition for Designation as an Eligible Telecommunications Carrier (filed Sept. 5, 2003) at p. 5 n.10.

⁷ *See, e.g., Cellular South License, Inc.*, DA 02-3317, *Memorandum Opinion and Order* (WCB, Dec. 4, 2002) at ¶ 32.

Marlene H. Dortch
September 30, 2003
Page 3

We trust that you will find this information to be useful. Should you have any questions or required any additional information, please call.

Sincerely,

/s/ David LaFuria

David LaFuria
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Counsel for Highland Cellular, Inc.

Enclosure

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