LUKAS, NACE, GUTIERREZ & SACHS
CHARTERED
1111 NINETEENTH STREET, N.W.
SUITE 1200
WASHINGTON, DC 20036
(202) 857-3500

WRITER'S DIRECT DIAL
(202) 828-9475

November 19, 2003

VIA ELECTRONIC FILING

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

Attn: Wireline Competition Bureau

Re: Highland Cellular, Inc.
Petition for ETC Status
Docket No. 96-45

Dear Madam Secretary:

Highland Cellular, Inc. ("Highland") hereby amends its above-referenced petition for ETC status in the Commonwealth of Virginia to provide additional information requested by the Commission, through its Wireline Competition Bureau ("WCB").

1. CTIA's Consumer Code for Wireless Services.

The Commission has requested Highland to abide by the CTIA's Consumer Code for Wireless Services.[1]

If designated as an ETC, Highland commits to abide by the CTIA Consumer Code for Wireless Services, as it may be amended from time to time, for all of its operations in the Commonwealth of Virginia.

[1] http://www.wow-com.com/pdf/The_Code.pdf

2. Consumer Complaint Reporting.

The Commission has indicated that as a condition of obtaining ETC status, Highland must file with the Commission an annual report of its customer complaints. Highland fully supports the Commission's efforts to collect service quality data that will permit it to develop meaningful service quality rules, to the extent necessary. If designated, Highland shall provide the FCC with an annual report providing the number of consumer complaints per 1000 handsets in service.

Collection of quality of service data is consistent with the Commission's determination in 1997 to monitor service quality standards so that rules may be developed if trends in service quality reveal the need for regulation.[2] Highland believes that collection of data on customer complaints of all CMRS carriers, irrespective of their status as ETCs, will enable the Commission to determine whether rules should be adopted, and encourages the Commission to collect such data from all CMRS carriers operating in Virginia.

Based on our review of comments filed in the ongoing Joint Board proceeding in CC Docket No. 96-45, we are constrained to note that some parties have launched a misguided attack on competitive ETCs ("CETCs") over the past year, claiming that competitive neutrality requires all ETCs to have similar regulatory obligations, including service quality standards similar to those applicable to ILECs. This view was squarely rejected by the Commission in 1997 when it ruled:

> Several ILECs assert that the Joint Board's recommendation not to impose additional criteria is in conflict with its recommended principle of competitive neutrality because some carriers, such as those subject to COLR obligations or service quality regulation, perform more burdensome and costly functions than other carriers that are eligible for the same amount of compensation. The statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs.[3]

Further complicating designation of CETCs is the assertion that service quality standards should be imposed by states (or the FCC) ***as a condition of designation***. Once again, the Commission could not have been more clear in ruling that "states may adopt and enforce service quality ***rules*** that are competitively neutral, pursuant to section 253(b), and that are not otherwise inconsistent with rules adopted herein."[4] Rules must be adopted in the course of rulemaking proceedings, not imposed *ad hoc* in the course of individual ETC designation proceedings.

---

2 *Federal-State Joint Board on Universal Service, Report and Order,* 12 FCC Rcd 8776, 8857-8 (1997).

3 Id., at 8857-58.

4 Id., at 8833.

It scarcely bears mention that service quality rules were not enacted as a *quid pro quo* for ILECs being designated as ETCs. Service quality rules are in place across the country for ILECs because almost without exception they are monopoly carriers. Consumers require appropriate protection from monopoly business practices. The discipline that is applied by robust marketplace competition is far more effective than regulation. Introduction of effective competition will lessen the need for full monopoly regulation of ILECs in Virginia.

If service quality is a problem for wireless carriers, then the problem is best addressed in a rulemaking proceeding of general applicability wherein all interested parties and stakeholders may participate. The Commonwealth of Virginia is fully empowered to enact statutes and conduct rulemaking proceedings to impose service quality standards on CMRS carriers should it so choose. Moreover, this Commission is permitted to adopt necessary rules to advance the goals of universal service and see that consumers receive high quality services as mandated by the Act.

Highland believes its customer service to be superior to its wireless and wireline competition. It looks forward to providing the Commission with the requested data and to participating in any rulemaking proceedings which address this important issue.

3. Service Provisioning Commitment.

As an ETC, Highland must take on federal carrier of last resort obligations which require the company to respond to all reasonable requests for service within its ETC service area.[5] The Commission requested Highland to describe specifically how it will provision service to requesting customers. Highland has made specific provisioning commitments to the West Virginia Public Service Commission which have been approved by the presiding administrative law judge in his recommendation that Highland be designated as an ETC in rural areas of the state.[6] Highland is pleased to make the same commitment that it made to the West Virginia Commission so service to requesting customers is properly provisioned:

In response to such requests for service at a residence or business, Highland will take the following steps:

1. If a request comes from a customer within its existing network, Highland will provide service immediately.

2. If a request comes from a customer residing in any area where Highland does not provide service, Highland will take a series of steps to provide service.

---

5 *See Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission,* FCC 00-248 (Aug. 10, 2000) ("A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request").

6 Highland Cellular, Inc. (West Virginia), Case No. 02-1453-T-PC (Recommended Decision, Sept. 15, 2003).

* First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.

* Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.

* Third, it will determine whether adjustments at the nearest cell site can be made to provide service.

* Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.

* Fifth, Highland will explore the possibility of offering the resold service of carriers that have facilities available to that location.

* Sixth, Highland will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using scarce high- cost support to serve the number of customers requesting service. If there is no possibility of providing service short of these measures, Highland will report this fact to the Commission, along with the proposed cost of construction and the company's position on whether the request for service is reasonable and whether high-cost funds should be expended on the request.[7]

Highland believes these service provisioning commitments will ensure that the company is responsive to consumers' needs while acting as a proper steward of available high-cost support funds.

4. Construction Plans

The Commission requested Highland to provide plans for using high-cost funds to improve its facilities and reach out to areas that it does not currently serve. Highland is pleased to provide this information with the understanding that, in the absence of a specific request for service, shifts in general consumer demand often cause a planned cell site to be relocated. In connection with its annual certification, Highland will also provide the Commission with information on how high-cost support funds are used so that any changes in construction plans can be properly explained.

There are areas within Highland's proposed ETC service area that are unserved and underserved. The company has identified three new projects that will not be constructed in the near future, if ever, in the absence of high-cost support being provided. These new sites have been identified as Jewell Ridge, Cliffield and Raven. Each of the sites contains some area that is

---

7 Highland understands that its West Virginia service provisioning commitment is slightly different from that which was previously submitted by Virginia Cellular LLC in the course of its ETC designation proceeding. To the extent that the Commission wishes to have consistent standards for Virginia carriers, Highland does not object to following those proposed by Virginia Cellular.

unserved by Highland's facilities. All contain substantial areas that can be considered unserved or underserved by wireless carriers.[8]

Currently, the potential support available to Highland in Virginia is just over $100,000 per year. These construction plans, projected to be carried out during the first three years following designation, represent significantly greater levels of financial commitment than the company expects to receive from the high-cost fund during that time. In addition, none of these projected expenses include maintenance or upgrading of existing plant in high-cost areas.

For the Commission's reference, Highland has prepared a spread sheet, attached hereto, that sets forth the site names, locations, populations covered, and estimated budget amounts. The order in which cell sites are to be constructed has not been determined, and subject to change depending up on where requests for service come from within the ETC service area. Although it is very difficult to plan cell site construction more than one year in advance, Highland is confident that there is demonstrable need for substantial additional facilities within high-cost areas in its service territory and that high-cost support will enable it to reach out to these underserved areas.

5. Advertising Commitment.

Highland specifically commits to advertise the availability of its services throughout its ETC service area. The company will provide notices at local unemployment, social security and welfare offices so that consumers who may not have telephone service can learn about Highland's service and the availability of Lifeline and Link-up discounts. In addition, the company commits to locally publicize the construction of all new facilities in unserved or underserved areas so that consumers understand that the new facilities provide improved service in their area of interest.

6. Service Area Redefinition.

Highland's petition proposes ETC designation throughout its licensed service area, which in some cases, does not match exactly the wire center boundaries of affected rural telephone companies. The Commission requested Highland to clarify its intentions in those areas.

Highland continues to study the affected areas and has not yet determined an appropriate course of action with respect to its proposed ETC service area boundary.

Highland believes that it should be designated throughout its proposed ETC service area and is not inclined to forgo designation in some areas simply because Highland does not have a license to serve throughout the affected ILEC wire center. For one thing, it is patently unfair to tell consumers who respond to a Lifeline outreach effort that Lifeline benefits are not available because, even though the company serves an area, it is not an ETC because of an arbitrary

---

[8] Highland notes that in its April 8, 2003 *ex parte* filing, it identified other sites to be constructed with high-cost support. Highland has since updated its construction list for high-cost areas, and plans to continue to do so on a regular basis.

boundary established for wireline operations. It is also difficult to rationalize and account for new construction plans using high-cost support when the ETC service area does not match the licensed area.

Nor does Highland believe it serves consumers well to offer service as an ETC throughout a wire center when Highland has no license to serve the entire area. This is especially so in a wire center such as Saltville, which is underserved (or in come cases unserved) by wireless facilities. Outside of its licensed service area, resale is the only option, and a poor one for consumers. Highland would have no control over customer service, system upgrades, introduction of E-911, system maintenance, new construction, nor will it have the ability to respond to outages or trouble reports.

If service quality standards are important, and Highland believes they are, then for a carrier to take on ETC obligations it must be able to control the customer experience and resale takes many critical aspects of customer service out of an ETC's hands.[9] Moreover, as a reseller, Highland would receive no high-cost support in those areas or be authorized to use support to construct new facilities to consumers.

Highland believes that the recent *ex parte* submission by the Rural Cellular Association concerning service area redefinition and disaggregation points out solutions that can be applied in this case. A copy is enclosed for reference. In addition, the Commission reached precisely the correct conclusions in finding that Cellular South should be designated as an ETC throughout its licensed service area, including in areas where it is licensed to serve only partial wire centers:

> Our analysis of the consumer benefits, the potential harm to consumers, and the effect of this ETC designation on rural telephone companies does not change based on Cellular South's ability to serve only a portion of this wire center. The affected consumers in this wire center will benefit from the provision of competitive service. Further, parties have offered no evidence of harm regarding Cellular South's ability to partially serve one of the rural wire centers.[10]

Highland has clearly demonstrated consumer benefits that will result from its designation and specifically, consumers in remote areas that are unserved and underserved by wireless facilities will see improvements in service as a result of the company expending high-cost support to construct new cell sites. The company also supports any affected ILEC's proposal to disaggregate support in an appropriate manner as a result of Highland's entry.

---

9 Advocates of imposing service quality standards on competitive ETCs cannot also advocate resale as an option that would advance service quality to consumers.

10 *Cellular South License, Inc.,* DA 02-3317 (Memorandum Opinion and Order, released December 4, 2002) at para. 34; *see also RCC Holdings, Inc.,* DA 02-3181 (Memorandum Opinion and Order, released November 27, 2002) at paras. 37-41.

In sum, Highland has not determined a course of action at this time, but requests the Commission to follow its Alabama decisions, which are consistent with those rendered by state commissions in, for example, Wisconsin, Maine, Minnesota, and Arizona.[11] Consumers will be best served by Highland's prompt designation throughout its proposed ETC service area so that it can respond to requests for service and facilitate the construction of new cell sites in areas where universal service can be significantly advanced.

We trust that you will find this information to be useful. Should you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,

HIGHLAND CELLULAR, INC

By:________/s/____________________
David LaFuria
Its Counsel

Enclosures

[11] See, e.g., Midwest Wireless Wisconsin, LLC, 8203-TI-100, Final Decision, (PSC, WI, mailed Sept. 30, 2003) ("An ILEC has the option to target the federal high-cost assistance it receives so that it receives more USF money per line in the parts of the territory where it costs more to provide service, and less federal USF money in the parts of the territory where it costs less to provide service. *In the Matter of Multi-Association Group (MAG) Plan*, FCC 01-157 (released 5/23/01), par. 147. (MAG Order) Since the competitive ETC receives the same per line amount as the ILEC, if it chooses to only serve the lower cost parts of the territory, then it receives only the lower amount of federal USF money. As a result, as recognized by the FCC, the concerns about “cherry picking” and “cream skimming” are largely moot. *In the Matter of Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (released 10/16/01), par. 12.