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December 12, 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 Designation as an ETC in the Commonwealth of Virginia
Docket No. 96-45, DA 02-2487

Dear Madam Secretary:

Highland Cellular, Inc. ("Highland") hereby supplements its above-referenced petition for ETC status in the Commonwealth of Virginia¹ to provide additional information requested by the Commission, through its Wireline Competition Bureau ("WCB").

1. Population of Towns to be Served by Highland's Proposed Construction.

The Commission has requested Highland to provide population data for the towns that Highland included in its attachment to the amendment filed on November 19, 2003 ("November 19 Amendment").² In that attachment, Highland provided estimates of the populations contained in the various towns to be covered by its proposed construction. A copy of that attachment is included here as Attachment 2 for your convenience.

¹ See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, CC Docket No. 96-45, Sept. 19, 2002.

² See *ex parte* letter from David LaFuria in CC Docket No. 96-45, dated November 19, 2003.

The areas Highland proposes to serve are remote. Several of Highland's proposed sites cover areas that cut across census-block boundaries, but the U.S. Census Bureau does not provide population data below the census-block level. Highland has therefore provided its own estimates of the populations expected to be covered for a portion of a census block³ or, in the case of today's filing, the total population for a census block where an estimate is not feasible.⁴ The population figures were obtained from Mapinfo Corporation, which used population data from the 1990 census. Based on that information, Highland believes that the populations of the towns and surrounding areas covered by the November 19 Amendment total approximately 4,500. We have been unable to find any reliable data from any other source that could be considered to be more accurate. Accordingly, we hope that the population counts we have provided are sufficient.

2. Analysis of Areas to Be Covered.

The Commission asked Highland to explain why it has chosen the Jewell Ridge, Clifffield and Raven areas for its initial construction. The Commission's most recent inquiry also included a request for information on why Highland did not specify a cell site in other parts of its proposed ETC service area.

If Highland were an ETC today, its understanding is that approximately \$260,000 of federal high-cost support would be available each year to assist in its construction efforts in Virginia.⁵ As the Commission is well aware, that is roughly the price of constructing a single cell site – in ordinary terrain. Based upon that estimate, Highland provided to the Commission an updated analysis of where it would construct new facilities if funds were available today.

The selection of the three initial sites was based solely on the company's best judgment of where consumer demand is high and network quality requires improvement. Of course, if demand changes as a result of new real estate development, customer requests, or other external factors, Highland would adjust its proposed construction accordingly. Indeed, over the years, Highland has modified its construction plans in Virginia and West Virginia several times based on such external factors.

Highland believes that there is demand for high-quality service in the area it has targeted for initial construction and that its network quality can be significantly improved with new cell sites located near those communities. Highland's current analysis indicates that the next three cell sites to be constructed, based on a rational build-out plan and consumer demand, should be in the places specified in the November 19 Amendment.

³ See November 19 Amendment.

⁴ See *infra* Section 4 and Attachment 1.

⁵ Table HC-01, First Quarter, 2004, available at <http://www.universalservice.org/overview/filings/2004/Q1>.

To be clear, all of the proposed ETC service area is considered high-cost. Accordingly, Highland is not proposing to use support in areas for which support is not intended. Moreover, Highland believes that its proposed construction represents the best use of funds for the benefit of the greatest number of Virginia consumers. The construction proposed in Highland's November 19 Amendment is initial, based on data available today. It does not represent a complete build-out of its system, which, like all networks, is an ongoing project. Highland will continue to invest in its system beyond what is currently envisioned and future construction will occur throughout the proposed ETC service area.

Highland believes that its initial construction plans are consistent with the rules and consistent with how rural ILECs have constructed facilities in rural areas over the years. If the Commission believes that Highland's proposed initial construction plans do not comply with the rules in any way, please advise undersigned counsel so that we may initiate further discussions or otherwise modify the plan to meet the rules.

3. Service Area Redefinition.

Highland remains hopeful that the Commission will follow the WCB's Alabama order in *RCC Holdings*⁶ and grant ETC status to Highland throughout its licensed service area in Virginia. Highland is aware of several states that have granted ETC status to rural wireless carriers exactly in the fashion Highland is requesting here, including for example, Wisconsin, Maine, Minnesota and Arizona.

The Commission has recognized that it is not competitively neutral to require competitors to serve consumers outside of areas where they are authorized to construct facilities to provide service.⁷ Moreover, as a practical matter, consumers would be poorly served by a resale requirement for areas outside of a wireless ETC's licensed service area, since a reseller cannot construct facilities, control customer service, upgrade facilities to provide appropriate service quality and redundancies, or even ensure provision of the nine supported services.⁸

The Commission's disaggregation rules eliminate the possibility of uneconomic support being paid to competitors. Accordingly, the Commission should reject incumbent claims of harm that have been rejected in every state that has carefully considered the matter.⁹ Incumbents who

⁶ *RCC Holdings, Inc.*, DA 02-3181 (W.C.B. rel. Nov. 27, 2002) (app. for rev. pending) ("*RCC Alabama Order*").

⁷ See *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8879-80 (1997) ("[I]f a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage.").

⁸ See, e.g., presentations of Alliance of Rural CMRS Carriers and Rural Cellular Association included with oral *ex parte* letter from David LaFuria in CC Docket No. 96-45, dated November 11, 2003.

⁹ See, e.g., *Alaska DigiTel, LLC*, U-02-39, Order No. 10 (Reg. Comm'n of Alaska, Aug. 28, 2003) ("*Alaska ETC Order*") at p. 16 ("There is no evidence that [the affected ILEC] will lose a significant number of customers as

are unhappy that states have consistently sided with competition are now seeking redress here in Washington with precisely the same arguments as those rejected in multiple states.

No incumbent carrier has identified any harm to either consumers or incumbents that would be associated with Highland's designation throughout its proposed ETC service area in Virginia. Should the Commission believe that any carrier may be receiving uneconomic support in any area, then it should encourage affected ILECs to file a plan of disaggregation under Path 2, so that support is more properly allocated. That is the competitively neutral answer and it is the lawful answer that many states have reached.

4. Alternative Proposals to Facilitate Grant of Highland's Petition.

Highland presents two alternative proposals which may facilitate a grant of its petition.

First, despite Highland's desire to serve throughout its licensed service area, should the Commission impose a requirement that Highland serve either all of a wire center or none of it, then Highland would agree to serve throughout the Jewell Ridge and Richlands wire centers and it would agree to not be designated in the Saltville and Honaker wire centers.

a result of increased competition by wireless services. There is no evidence that consumer local rates will increase or that quality or availability of service will decrease as a result of granting the application . . . In summary, we find that granting ETC status to ADT is in the public interest.”; GCC License Corp., Docket No. 99-GCCZ-156-ETC, Order No. 10 (Kansas Corp. Comm. May 19, 2000) (“GCC Kansas Order #10”) (“The Commission finds, as a general principle, that allowing additional ETCs to be designated in rural telephone company service areas is in the public interest.”); RFB Michigan ETC Order, *supra*, at p. 3 (“In this case, designating RFB as an eligible telecommunications carrier is likely to promote competition and provide benefits to customers in rural and high-cost areas by increasing customer choice, while promoting innovative services and new technologies and encouraging affordable telecommunications services.”); Cellular South License, Inc., Docket No. 01-UA-0451 (Miss. P.S.C. Dec. 18, 2001) (“Cellular South Mississippi ETC Order”) at pp. 7-8 (“Competition drives down prices and promotes the development of advanced communications as carriers vie for a customer’s business. In a competitive market, rural consumers will be able to choose services from a carrier that best meets their communications needs.”); WWC Texas RSA L.P., PUC Docket Nos. 22289, 22295, SOAH Docket Nos. 473-00-1167, 473-00-1168 (Tex. P.U.C. Oct. 30, 2000) (“WWC Texas ETC Order”) at pp. 19-20 (“The availability of WWC as a second provider, which might not occur in the absence of the requested designations, will bring a choice of providers to consumers in rural areas, many of whom are now served by a single provider.”); United States Cellular Corp., et al., Docket No. UT-970345 at p. 13 (Wash. Util. & Transp. Comm. Jan. 18, 2000) (“U.S. Cellular Washington Order”) (“Our decision promotes choice for rural customers. . . .”); Highland Cellular, Inc., Recommended Decision, Case No. 02-1453-T-PC (W.V. ALJ Sept. 15, 2003) (“The customers who are located in Frontier’s service territory are not the property of Frontier . . . Rather, the Commission has the duty to carefully manage the transition from a monopoly service area to a competitive service area so that the customers ultimately can get the services that they want and need.”); Midwest Wireless Wisconsin, LLC, Docket No. 8203-T1-100 (Wisc. PSC Sept. 30, 2003) at pp. 8-9 ([D]esignating Midwest as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice . . . Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains.”).

With respect to Jewell Ridge, Highland acquired a PCS license in the neighboring county within the last several weeks, and therefore has the capability to provide service throughout the entire wire center.¹⁰

With respect to the Richlands wire center, Highland is licensed throughout most of the wire center and is attempting to acquire additional spectrum that will cover some of the uncovered area.

Highland serves less than half of the Saltville wire center and almost none of Honaker, making it much more difficult to serve these wire centers. For example, Highland believes that there is little or no wireless service in portions of the Saltville wire center where Highlands is not licensed to serve. Highland has previously stated why resale of wireline service to consumers does not advance the Commission's universal service goals of driving infrastructure investment and new technologies into rural areas.¹¹

Alternatively, should the Commission decide to deny ETC designation in the four wire centers listed above, then Highland would adjust its initial construction plans by proposing new cell sites in other portions of its service area where ETC designation is granted. It would target cell sites that would serve: (1) Tiptop, Bailey, Horsepen, and surrounding areas; (2) Pocahontas, Bernieville, Boissevain and surrounding areas; and (3) Burkes Garden, Little Town, Gose Mill and surrounding areas. A chart containing relevant population coverage data is enclosed. We note that these areas are also remote and therefore the population figures provided are for the entire census block as described in Section 1 above.

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 A. LaFuria
Its Counsel

Enclosures

¹⁰ As Highland expands its facilities in the newly acquired market, it anticipates applying for additional ETC designation throughout that area in a future filing.

¹¹ See *supra*, n.8 and accompanying text.

ATTACHMENT 1

**POPULATION OF AREAS DESCRIBED IN
SECOND ALTERNATIVE PROPOSAL**

Site	Towns Covered	Est. Pops. Covered	Est. Budget
1	Tiptop/Bailey/Horsepen and surrounding area	2,258	\$300,000
2	Pocahontas, Bernieville, Boissevain and surrounding area	3,411	\$300,000
3	Burkes Garden, Littleton, Gose Mill and surrounding area	1,036	\$300,000

ATTACHMENT 2

**POPULATION CHART SUBMITTED WITH
NOVEMBER 19 AMENDMENT**

#	Site Name	Towns Covered	Est. Pops Covered	Est. Budget
1	Jewell Ridge	Jewell Ridge, Coaldan, Pleasant Hill	1,000 - 1,250	\$ 300,000
2	Raven	Raven, Doran	1,500 - 2,000	\$ 300,000
3	Clifffield	Clifffield, Maxwell, Gillespie	750 - 1,250	\$ 250,000