

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N W
Suite 100
Washington, D C 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 2, 2004

PETER CONNOLLY
202-8625989
p.connolly@hklaw.com

VIA HAND DELIVERY

Marlene Dortch
Secretary
Federal Communication Commission
445 12th Street, SW
Washington, DC 20556

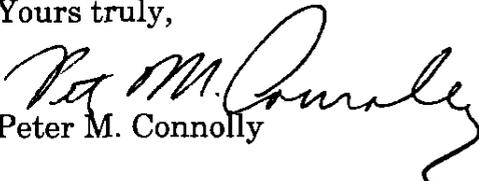
Re: Petition For Waiver of Section 54.307(c) of the FCC's Rules, CC
Docket 96-45

Dear Ms. Dortch:

Herewith transmitted on behalf of United States Cellular Corporation are an original and four copies of its' Petition For Waiver of Section 54.307(c) of the FCC's Rules.

In the comment there are questions regarding this matter, please communicate with the undersigned.

Yours truly,


Peter M. Connolly

cc (w/encl.): Universal Service Administrative
Company
2000 L Street, NW
Washington, DC 20036

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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES)
CELLULAR CORPORATION)
) CC Docket 96-45
Petition for Waiver of)
Section 54.307 of the)
FCC's Rules)

UNITED STATES CELLULAR CORPORATION
PETITION FOR WAIVER-EXPEDITED PROCESSING REQUESTED

United States Cellular Corporation ("USCC"), through undersigned counsel, and pursuant to Section 1.925(b) of the FCC's Rules, 47 C.F.R. § 1.925(b), hereby requests a waiver of Section 54.307(c) of the FCC's Rules, 47 C.F.R. 54.307(c), to permit USCC to receive the Interstate Common Line Support ("ICLS") to which it would otherwise be entitled for the three month period covered by its September 29, 2003 ICLS filings for the states of Iowa, Washington, and Wisconsin. Owing to an error by UPS, the filings were not received at the Universal Service Administrative Company ("USAC") until October 1, 2003, one day after the filing deadline, and thus USCC has not received any support payments for the months covered by the filing.¹ For the reasons given below, the public interest would be served by a waiver of the filing deadline in these circumstances, permitting USCC to receive the support to which it is entitled.

¹ In order to be eligible for ICLS support pursuant to Section 54.307, a competitive ETC must submit its line count data, as of a date six months previous to the filing, on a quarterly basis, by March 30, July 31, September 30 and December 30 of each year.

Factual Background

USCC is an Eligible Telecommunications Carrier ("ETC") in the states of Washington, Iowa, and Wisconsin, designated in accordance with Section 214(e)(2) of the Communications Act [47 U.S.C. Section 214(e)(2)]. It is a "competitive" wireless ETC. Initial certifications for ICLS support for all three states were filed by USCC, pursuant to Section 54.904 of the FCC's Rules, on December 30, 2002. USCC's required yearly certifications for ICLS support were filed with the FCC and USAC on June 6, 2003 and USCC made its ICLS line count filings successfully in December, 2002, and in March and July, 2003.

Until the filings due on March 30, 2003, USAC permitted all "High Cost," ICLS and Interstate Access Support ("IAS") filings to be made at USAC headquarters in Washington, DC. This was convenient for USCC, as all such filings could be made by undersigned counsel, who could ensure that they would be filed on time.

However, as is noted in a USAC notice of March 5, 2003 (Attachment A hereto), ETCs were notified in early 2003 that the March 30, 2003 and subsequent High Cost and IAS filings had to be made in Whippany, New Jersey and that ICLS filings had to be sent to Harrisburg, Pennsylvania.² The use of such disparate filing locations, far from Washington based communications counsel, necessitated the use of overnight courier services.

² Beginning with the December 30, 2003 filings, USAC changed filing locations again, requiring that all line count filings be made in Piscataway, New Jersey.

USCC employed UPS, a reputable overnight courier, to make its filings, and as noted above, made its March 30, 2003, June 30, 2003 and July 31, 2003 USAC filings satisfactorily from its Chicago headquarters. On September 29, 2003, USCC transmitted via UPS its Washington, Iowa, and Wisconsin High Cost and IAS line count data to USAC in Whippany, NJ and its ICLS line counts to Mr. David Rolka, USAC's consultant, in Harrisburg, PA.

Attached hereto, as Attachments B, C, and D, are copies of the cover letters to the ICLS filings. Date-stamped copies of the cover letters were not returned to USCC, though USCC requested they be returned and enclosed self-addressed envelopes for that purpose. USCC has copies of its line count filings, but they comprise 216 pages and are thus not attached hereto. They can readily be supplied if the FCC wishes to review them in this proceeding. Also, USAC presumably still has the originals, which were also not returned, though they have not been "processed."

The High Cost and IAS line counts were delivered by UPS to USAC/NECA in Whippany, NJ on September 30, 2003. However, despite being correctly addressed, owing to an "incorrect routing" at a UPS facility, the ICLS line counts were mistakenly delivered to the Dallas-Fort Worth Airport on September 30, 2003, before being sent on to Mr. Rolka in Harrisburg on October 1, 2003. Attached hereto (Attachment E) is a copy of the relevant USCC UPS "shipping document," and UPS's internal tracking data, provided to USCC by UPS. It clearly indicates

and acknowledges the mistake in routing, causing the package to be delivered one day late.

On September 30, 2003, USCC had no reason to believe that the Harrisburg package had not been delivered correctly, as there were no adverse weather conditions and UPS did not advise USCC of any mishap. Had USCC become aware of the problem on September 30, it could have faxed the ICLS line counts to USAC's contractor as a stopgap measure. Fax transmission is unsatisfactory, owing to its inherent technological difficulties and to the number of pages involved in each of the filings (13 for Washington State, 61 for Wisconsin, 142 for Iowa), but USCC would have faxed the line counts if the alternative was a late filing.

USCC, however, did not become aware of the problem until it noticed a shortfall in its USF payments in its February 27, 2004 USAC "High Cost Statement," which reported the January 2004 payment. Checking with USAC and UPS revealed what had happened, which is described above. USCC's January, February and March 2004 USF payments will be affected.

I. The FCC Should Grant A Waiver In These Circumstances.

The FCC's general approach to waiver issues was set out in a 2001 order which granted a waiver of a USAC filing deadline:

"Generally, Commission rules may be waived for good cause shown. As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship,

equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules therefore is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."³

The public interest would certainly be served by granting the requested waiver. USCC has been designated as a competitive ETC by the public service commissions of Washington, Iowa, and Wisconsin, reflecting their judgment that the public interest would be served by those designations, which carry out the mandates of the statute and FCC regulations. USCC's receipt of ICLS support, as well as High Cost and IAS support, is essential to its provision of "supported" services in rural, high cost and underserved portions of those states. It would, we submit, be unreasonable and inequitable to deny USCC its mandated ICLS support for three months for those states (worth approximately \$1.8 million by USCC's estimate) because its ICLS filings, which were timely transmitted in one package, arrived in Harrisburg one day late, but obviously still in time to be processed without any inconvenience to USAC, or prejudice to any other party.

USCC is aware that since 1985 the FCC's general policy has been that:

"applicants" are not granted waivers of "application filing deadlines" on account of "inclement weather or failures of third party couriers."⁴

The FCC has stated that:

"although these circumstances may be unexpected, they are reasonably foreseeable and therefore

³ Smith Bagley, Inc., 16 FCC Rcd 15275, 15276 (C.C. Bur. 2001).

⁴ Mary Ann Salvatoriello, 6 FCC Rcd 4705, 4708 (1991).

applicants should allow enough time for such unanticipated delays."⁵

The FCC however, has not applied this doctrine consistently with respect to USAC filing deadlines, with good reason. Neither those entities seeking discounted service under the "school and libraries" and rural health care programs, nor competitive ETCs stand in the same shoes as self-interested "applicants" seeking the benefits of an FCC license. The latter type of applicant can reasonably be held to strict procedural deadlines. The FCC, however, has treated those dealing with USAC differently, in part because of the public interest in providing universal service assistance to those eligible to receive it under the law.

Thus, while the FCC has sometimes enforced USAC filing deadlines against "schools and libraries" applicants for discounted services,⁶ the FCC and USAC also altered USAC's policy, beginning in Funding Year 2001, to allow FCC Forms 471, which notify USAC of what services have been ordered by such applicants, to be considered filed with USAC when postmarked, rather than received. The new policy was:

"designed to ensure that [schools and libraries] applicants are held harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time."⁷

⁵ Public Notice, "FCC Overrules Caldwell Television Associates, Ltd.," FCC 85-534, 58 R.R. 2d 1706, 1707 (1985).

⁶ See, e.g., In the Matter of Application For Review of a Decision by the Wireline Competition Bureau; Information Technology Department State of North Dakota, 11 FCC Rcd 21521 (2003); In the Matter of Request for Review of the Decision of the Universal Service Administration by Stafford Municipal School District, 18 FCC Rcd 1795 (WCB 2003).

⁷ Alpine County Unified School District, 17 FCC Rcd 1718, 1719 (C.C. Bur. 2002). See also Northwest Tri-County Intermediate Unit, 18 FCC Rcd 22889 (W.C.B. 2003) (permitting Form 401 to

There is no good reason not to apply the "mailbox" rule to ETC USAC filings as well.

Moreover, and more directly relevant to USCC's situation, the FCC has repeatedly waived USAC filing deadlines to facilitate competitive ETCs receiving funding in various contexts.

In 1999, the Common Carrier Bureau agreed to waive Section 54.307 to permit Centennial Cellular Corporation to have filed its initial line count data, due on July 31, 1998, on August 20, 1998.⁸ The Bureau found persuasive Centennial's argument that "confusion and the volume of new information surrounding universal service" and a strike by employees of another company had caused it to miss the filing deadline. We would note that Centennial's filing arrived twenty days late and USCC's arrived one day late as a consequence of a courier mistake.

In 2001, the FCC waived clear and explicit USAC filing deadlines to permit the State of West Virginia to file 22 days late its required "certification" authorizing a West Virginia "non-rural" carrier to receive USF payments. See West Virginia Public Service Commission, 16 FCC Rcd 5784 (2001). The FCC's reason for granting the waiver was that the state's laxity in filing its certification should not result in indirectly penalizing affected customers. The same rationale would apply here with respect to USCC's customers, who will benefit from the improved service which ICLS support helps to provide.

be picked up and delivered by courier after the "postmarking" deadline owing to courier failure to pick up the filing before the deadline).

⁸ Centennial Cellular Corporation, CC Docket 96-45, DA 99-453, released March 4, 1999 (C.C. Bureau).

Also, in 2001, the Common Carrier Bureau granted a wireless ETC a waiver to file its required yearly "IAS" certification to USAC and the FCC eleven days late.⁹ The certification had been due on June 30, 2001. The carrier filed it on July 11, 2001. The carrier had not tried to file timely, as did USCC. It simply missed the applicable filing date owing to an oversight. However, the Bureau made the following public interest findings in support of the waiver grant:

"SBI is currently providing supported service on three Indian reservations. Strict application of the filing deadline in this instance may jeopardize the provision of service and delay system construction and upgrades in those areas. Waiver of the filing deadline will permit SBI to receive interstate access universal service support uninterrupted, and continue its efforts to increase access to telecommunications services in those areas consistent with our statutory goal of preserving and advancing universal service pursuant to Section 254 of the Act. Such a waiver is also consistent with our mandate to ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, have access to telecommunications and information services."¹⁰

USCC would submit that there is no principled basis for the FCC to distinguish between the "value" of the supported service provided by one competitive ETC as opposed to another. If the ETC in Smith Bagley was entitled to a waiver of a clear and unequivocal yearly certification deadline, which it simply missed, for the public interest reasons enumerated above, then USCC should be

⁹ Smith Bagley, Inc., *supra*.

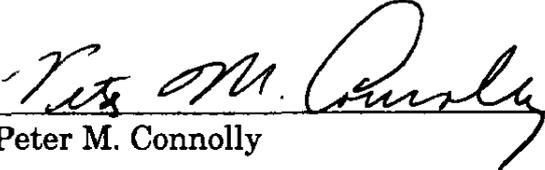
¹⁰ Ibid., at 15276.

granted a comparable waiver when it tried but failed, by one day owing to a courier error, to comply with a quarterly line count filing deadline.

Conclusion

For the foregoing reasons, USCC requests that the FCC waive Section 54.307(c) to direct USAC to accept the ICLS filings, thus permitting USCC to receive ICLS support for the three month period affected by its September 29, 2003 ICLS line count filings.

Respectfully submitted,


Peter M. Connolly

HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006
(202) 955-3000
email: peter.connolly@hklaw.com

April 2, 2004

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Attachment A

**March 5, 2003 USAC Advisory Notice
Discussing Filing Locations**



Universal Service Administrative Company
High Cost & Low Income Division

Irene M. Flannery
Vice President

iflannery@universalservice.org

USAC IS PROVIDING SAMPLE LETTERS FOR COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIERS (CETCS) TO USE FOR SUBMISSION OF LINE COUNT FILINGS IN ORDER TO RECEIVE HIGH COST SUPPORT.

Currently, there are no Office of Management and Budget (OMB) approved forms for CETCs to submit line count information to USAC for any component of the High Cost support mechanism other than ICLS. CETCs must use the FCC Form 507 posted on USAC's web site for ICLS line count filings. USAC is providing to CETCs sample letters for line count submissions for each component of the High Cost support mechanism other than ICLS. **You should provide separate letters for areas in which you are eligible to receive support versus areas in which you are ineligible to receive support and seeking ETC designation. For ICLS, you should provide separate FCC Forms 507 for areas in which you are eligible to receive support versus areas in which you are ineligible to receive support and seeking ETC designation.**

High Cost Loop (HCL), Local Switching (LSS), and Long Term Support (LSS)

You should clearly identify your name, your study area code, and the name and study area code of the incumbent carrier in whose service area(s) you serve lines on each page submitted for HCL, LSS, and LTS. In addition to this information, you must clearly indicate if the line counts provided are in areas where you are ineligible to receive support and seeking ETC designation. A sample line count letter for HCL, LSS, and LTS is attached as Attachment A.

High Cost Model (HCM) Support

You should clearly identify your name, your study area code, and the name and study area code of the incumbent carrier in whose service area(s) you serve lines on each page submitted for HCM support. In order to receive HCM support, you must provide line counts by incumbent wire center. In addition to this information, you must clearly indicate if the line counts provided are in areas where you are ineligible to receive support and seeking ETC designation. A sample line count letter for HCM support is attached as Attachment B.

Interstate Access Support (IAS)

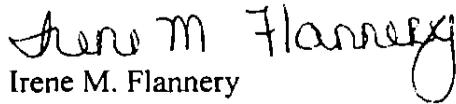
You should clearly identify your name, your study area code, and the name and study area code of the incumbent carrier in whose service area(s) you serve lines on each page submitted for IAS. In order to receive IAS, you must provide line counts by UNE Zones (where established) and customer class. (Residential and single line business lines are reported separately from multi-line business lines.) In addition to this information, you must clearly indicate if the line counts provided are in areas where you are ineligible to receive support and seeking ETC designation. A sample line count letter for IAS is attached as Attachment C.

As a reminder, your line counts should be sent to USAC at the following addresses:

HCL, LSS, LTS, HCM, and IAS	ICLS
USAC	USAC
Attn: Rich Rhyner	Attn: David Rolka
80 South Jefferson Road	One South Market Square, 12 th Floor
Whippany, NJ 07981	Harrisburg, PA 17101

The sample line count filing letters are posted on USAC's web site at www.universalservice.org/hc/forms. If you have additional questions, please contact me or Karen Majcher at (202-776-0200).

Sincerely,



Irene M. Flannery
Vice President

Attachment B

**Cover Letter of September 29, 2003
USCC Iowa ICLS Filing**



September 29, 2003

Mr. David Rolka
Universal Service Administration Company
One South Market Square
12th Floor
Harrisburg, PA 17101

Re: United States Cellular Corporation/Line Counts for
Interstate Common Line Support

Dear Mr. Rolka:

On behalf of United States Cellular Corporation ("USCC"), herewith transmitted is FCC Form 507, which includes line count data as of March 31, 2003 by study area, broken out by residential and multi-line business categories, for the State of Iowa. It is submitted in support of USCC's request for Interstate Common Line Support (ICLS) for Iowa.

On January 15, 2002, USCC was designated as an Eligible Telecommunications Carrier ("ETC"), pursuant to Section 214(e) of the Communications Act, in Iowa by Order of the Iowa Utilities Board (Docket No. 199-IAC-39.2(4)).

An initial USCC certification for ICLS support in Iowa, pursuant to Section 54.904 of the FCC's Rules, was filed at the FCC and USAC on December 30, 2002. The required yearly certification for ICLS support, including the State of Iowa, was filed with the FCC and USAC on June 6, 2003.

It is requested that the enclosed file copy of this letter be date stamped and returned in the enclosed self-addressed envelope.

In the even there are any questions concerning this matter please contact the undersigned.

Very truly yours,

Scott D. Martenson
Enclosures

1196297_v1

Attachment C

Cover Letter of September 29, 2003
USCC Wisconsin ICLS Filing



September 29, 2003

Mr. David Rolka
Universal Service Administration Company
One South Market Square
12th Floor
Harrisburg, PA 17101

Re: United States Cellular Corporation/Line Counts for
Interstate Common Line Support

Dear Mr. Rolka:

On behalf of United States Cellular Corporation ("USCC"), herewith transmitted is FCC Form 507, which includes line count data by study area, broken out by residential and multi-line business categories, for the State of Wisconsin as of March 31, 2003. It is submitted in support of USCC's request for Interstate Common Line Support (ICLS) for Wisconsin.

On December 20, 2002, USCC was designated as an Eligible Telecommunications Carrier ("ETC"), pursuant to Section 214(e) of the Communications Act, in Wisconsin by Order of the Wisconsin Public Service Commission (Docket No. 8225-TI-102).

An initial USCC certification for ICLS support in Wisconsin, pursuant to Section 54.904 of the FCC's Rules, was filed at the FCC and USAC on December 30, 2002. The required yearly certification for ICLS support, including the State of Wisconsin, was filed with the FCC and USAC on June 6, 2003.

It is requested that the enclosed file copy of this letter be date stamped and returned in the enclosed self-addressed envelope.

In the even there are any questions concerning this matter please contact the undersigned.

Very truly yours,

Scott D. Martenson
Enclosures

Attachment D

Cover Letter of September 29, 2003
USCC Washington State ICLS Filing



September 29, 2003

Mr. David Rolka
Universal Service Administration Company
One South Market Square
12th Floor
Harrisburg, PA 17101

Re: United States Cellular Corporation/Line Counts for
Interstate Common Line Support

Dear Mr. Rolka:

On behalf of United States Cellular Corporation ("USCC"), herewith transmitted is FCC Form 507, which includes line count data as of March 31, 2003 by study area, broken out by residential and multi-line business categories, for the State of Washington. It is submitted in support of USCC's request for Interstate Common Line Support (ICLS) for Washington State.

On December 31, 1997, USCC was designated as an Eligible Telecommunications Carrier ("ETC"), pursuant to Section 214(e) of the Communications Act, in Washington State by Order of the Washington Utilities and Transportation Commission (Docket No. UT-97-35) for a portion of the service area in Washington State. On December 29, 1999, USCC was designated as an ETC for other parts of its service area.

An initial USCC certification for ICLS support in Washington, pursuant to Section 54.904 of the FCC's Rules, was filed at the FCC and USAC on December 30, 2002. The required yearly certification for ICLS support, including the State of Washington, was filed with the FCC and USAC on June 6, 2003.

It is requested that the enclosed file copy of this letter be date stamped and returned in the enclosed self-addressed envelope.

In the even there are any questions concerning this matter please contact the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Scott D. Martenson".

Scott D. Martenson

Enclosures

1192680_v1

Attachment E

UPS Shipping Document and Explanation
of Routing Error

ups UPS Next Day Air
UPS Worldwide Express

See Instructions on back. Call 1-800-PICK-UPS (800-742-5877) for additional information.

1Z 61X 045 22 1015 785 7

UPS ACCOUNT NO.
61X045

REFERENCE NUMBER
175029

NAME TELEPHONE
Scott Martenson 773-399-8900

COMPANY
UNITED STATES CELLULAR

STREET ADDRESS
8410 W BRYN MAWR RM 700

CITY AND STATE ZIP CODE
CHICAGO IL 60631 3408

EXTRAREGIONALLY DELIVERED TELEPHONE

NAME TELEPHONE
David Rolka 717-233-5731

COMPANY
USAC

STREET ADDRESS DEPT./FLR
One South Market Square 12th

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL) ZIP CODE
Harrisburg, PA 17101



WEIGHT	DIMENSIONAL WEIGHT	SHIPPER'S COPY	
		CHARGES	
<input checked="" type="checkbox"/>	NEXT DAY AIR	<input type="checkbox"/>	EXPRESS (INT'L)
FOR WORLDWIDE EXPRESS SHIPMENTS Mark an "X" in this box if shipment only contains documents of no commercial value.		<input type="checkbox"/>	DOCUMENTS ONLY
<input type="checkbox"/>	SATURDAY PICKUP	<input type="checkbox"/>	SATURDAY DELIVERY
<input type="checkbox"/>	INSURED VALUE	\$	AMOUNT
<input type="checkbox"/>	C.O.D.	\$	AMOUNT
<input type="checkbox"/>	An Additional Handling Charge applies for certain items. See Instructions.		
<input checked="" type="checkbox"/>	BILL SHIPPER	<input type="checkbox"/>	BILL RECEIVER
	<input type="checkbox"/>	<input type="checkbox"/>	BILL THIRD PARTY
	<input type="checkbox"/>	<input type="checkbox"/>	CREDIT CARD
	American Express Diner's Club MasterCard Visa		<input type="checkbox"/>
RECEIVERS / THIRD PARTYS UPS ACCT. NO. OR MAJOR CREDIT CARD NO.		EXPIRATION DATE	
THIRD PARTY'S COMPANY NAME			
STREET ADDRESS			
CITY AND STATE		ZIP CODE	
SHIPPER'S SIGNATURE <i>Scott Martenson</i>			
		DATE OF SHIPMENT	
		9/29/03	
0101911202609 6/00 M			



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- Track by Reference Number
- Import Tracking Numbers
- Track by E-mail
- Get Quantum View Files
- Request Quantum View Notify
- Void a Shipment
- Help

Track by Tracking Number

View Details

Status: Delivered
Delivered on: Oct 1, 2003 9:47 A.M.
Signed by: WEINTHOB
Location: RECEIVER
Delivered to: HARRISBURG, PA, US

Tracking Number: 1Z 61X 045 22 1015 785 7
Service Type: NEXT DAY AIR
Weight: 4.00

Package Progress:

Date	Time	Location	Activity
Oct 1, 2003	9:47 A.M.	HARRISBURG, PA, US	DELIVERY
Sep 30, 2003	1:17 A.M.	DALLAS/FT WORTH A/P, TX, US	ROUTED INCORRECTLY AT UP FACILITY;PKG HAS BEEN RERC TO DESTINATION

Tracking results provided by UPS: Mar 25, 2004 2.44 P.M. Eastern Time (USA)

NOTICE: UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited

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Quantum View Notify

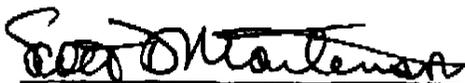
DECLARATION UNDER PENALTY OF PERJURY

I Scott Martenson, do hereby declare under penalty of perjury, as follows:

1. I am Lifeline Product Manager for United States Cellular Corporation ("USCC").
2. This declaration is submitted in support of USCC's Petition for Waiver ("Petition").
3. I am responsible for all filings made with the Universal Service Administrative Company ("USAC") by USCC.
4. All factual assertions made in the Petition with respect to USCC's USAC filings are true and correct to my personal knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 2, 2004



Scott Martenson
Lifeline Product Manager
United States Cellular Corporation