

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In re</b>	)	
	)	
<b>HIGHLAND CELLULAR, INC.</b>	)	
	)	<b>CC Docket No. 96-45</b>
<b>Petition for Waiver of</b>	)	
<b>Sections 54.802, 54.809(c), 54.307(c)</b>	)	
<b>54.313, and 54.314</b>	)	
<b>of the Commission's Rules</b>	)	

**SUPPLEMENT TO PETITION FOR WAIVER**

Highland Cellular, Inc. (“Highland”), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. §1.925, hereby supplements its January 17, 2003 request for waiver of Sections 54.802(a), 54.809(c), and 54.307(c) of the Commission's rules, 47 C.F.R. §54.802(a), 47 C.F.R. §54.809(c), and 47 C.F.R. §54.307(c) in order to include a request for waiver of FCC rule sections 54.313 and 54.314.<sup>1</sup> Highland presents this supplement in order to provide the Commission with a more detailed explanation of the facts in this case and the reasons why there is “good cause” for the waiver granted as provided by 47 C.F.R § 1.3<sup>2</sup>. Highland has requested that the Commission waive the aforementioned rules to accept a retroactive state certification and late-filed interstate access and high cost model support line count submissions, so that Highland can receive vital interstate access support and high cost model support as of May 30, 2002, the date that it was designated as an Eligible Telecommunications Carrier (“ETC”), and so that such support will continue to rural West Virginia without interruption.<sup>3</sup>

---

<sup>1</sup> No fee is required to be submitted with this request.

<sup>2</sup> No formal motion regarding this supplement is being transmitted. Applicable rules do not limit supplements to waiver request of this nature. Moreover, the staff has been advised informally that this supplement would be forthcoming and expressed a tentative willingness to entertain it.

<sup>3</sup> For the Commission’s convenience, copies of the line counts, as filed, are attached hereto as Exhibit A.

## I. BACKGROUND

Highland's Petition involves two separate waiver requests that have been joined in one proceeding pursuant to ongoing discussions with the Commission staff. The first request stems from Highland's initial submission of line count reports following its designation as an ETC in West Virginia. The second request was filed as a result of Commission staff advising Highland that support could be provided if the company filed line counts for its operations dating from its inception as an ETC.

In May 2002, Highland obtained ETC status in the state of West Virginia to provide universal service to subscribers in areas served by a non-rural local exchange carrier.<sup>4</sup> Highland is entitled to receive interstate access and high cost model support in West Virginia in its designated ETC service area. Because Highland is a small cellular carrier serving only sparsely populated areas in West Virginia and Virginia, both forms of support are critically important to Highland's operations. Such support assists Highland in providing a quality universal service offering to the underserved rural communities. It would be extreme and inequitable to penalize Highland by cutting off high cost model support for a calendar quarter for missing the certification and line count filing deadlines by no more than two days.

The FCC Rules Sections involved in this request for waiver are as follows.

- Section 54.809(c): In order to receive interstate access support, a carrier serving lines in the service area of a price cap local exchange carrier "must file an annual certification, as described in paragraph (b) of this section on the date that it first files its line count information pursuant to §54.802, and thereafter on June 30<sup>th</sup> of each year." 47 C.F.R. §54.809(c).
- Section 54.802(a): In order for an ETC to be eligible for interstate access support,

---

<sup>4</sup> *Recommended Decision In the Matter of Highland Cellular, Inc. Petition for Consent and Approval To Be Designated As An Eligible Telecommunications Carrier*, Case No. 01-1604-T-PC, May 10, 2002 (Final Order May 30, 2002).

interstate access line count filings must be submitted no later than the last business day of March, June, September, and December of each year. 47 C.F.R. §54.802(a).

- Section 54.307(c): In order to be eligible for various types of high-cost support, a competitive eligible telecommunications carrier must submit its line count data on a quarterly basis in March, July, September and December of each year.<sup>5</sup> 47 C.F.R. § 54.307(c).
- Section 54.313(a): States that desire non-rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a non-rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§54.309 and/or 54.311 must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §§54.309 and/or 54.311 shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.
- Section 54.313(d)(3): In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule.... Carriers subject to certifications filed on or before January 1 shall receive support pursuant to §54.309 or §54.311, whichever is applicable, in the second, third and fourth quarters of that year. Such carriers shall not receive support pursuant to §54.309 or §54.311, whichever is applicable, in the first or second quarters of that year.
- Section 54.314(d)(2): States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §§54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter shall only be provided to the extent that the State has filed the requisite certification pursuant to this section....Carriers for which certifications are filed on or before January 1 shall receive support pursuant to §§54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter, in the second, third, and fourth quarters of that year. Such carriers shall not receive support

---

<sup>5</sup> Section 54.309(a) of the rules notes that the amount of support available is derived from line count data submitted pursuant to Section 54.307(c).

pursuant to §§54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter in the first quarter of that year.

**A. Highland's Request For Waiver of Line Count Filing Deadlines.**

Following its designation as an ETC, Highland's first annual interstate access certification, required by §54.809(c), and its first interstate access line count data required by §54.802(a), were received by the Commission on July 1, 2002, one day after the applicable deadline. In anticipation of the deadline, Highland prepared the necessary reports to collect the March 31 customer data from its billing system, purchased the software necessary to geocode its customer base and became familiar with the filing process. Highland mailed these two documents to the Universal Service Administrative Company ("USAC") on June 28, 2002 with the belief that both submissions had to be post-marked by June 30, 2002. Immediately following the deadline, Highland had several conversations with USAC as a reporting error required a line count revision to be filed. This line count revision was filed on July 31, 2002. In these conversations, which occurred after Highland's filings were received, USAC did not advise Highland that its submissions were not timely filed or that support would not be provided.

Believing that it was acting properly, Highland followed the same procedure with respect to its subsequent high cost line count data filings, required by §54.307(c), which were due July 31, 2002 and September 30, 2002. Again, USAC did not notify Highland that these two filings were not timely filed. Accordingly, Highland followed the same procedure with respect to its interstate access line count data, required by §54.802(a), due September 30, 2002. Each of Highland's line count filings was prepared well in advance and were ready to be filed several days before the applicable deadline. Each was mailed and postmarked on or before the applicable deadlines.

Acting without the benefit of counsel at the time, Highland's principals read the rule, which

requires filings to be ‘submitted’, to require that the certification and line count filings be sent and postmarked by the due date, as is required for most other federal filings, such as federal tax returns. Accordingly, Highland expected interstate access and high cost model support to commence in December of 2002. When it did not, Highland telephoned USAC and engaged FCC counsel to investigate. In late December, USAC reported to Highland for the first time that interstate access and high cost model support had not yet commenced because its interstate access certification and line count data were not received on or before the applicable deadlines. Highland’s principals now understand that the Commission interprets §54.809(c), §54.802 and §54.309(c) to mean that a certification and/or line count submission is required to be received at USAC on the due date. **B.**

#### **Highland’s Request to Accept the WVPSC’s Certification**

As its petition for waiver was being processed, Commission staff advised Highland through its counsel that it is eligible to receive support from the date that it became an ETC in West Virginia, provided Highland obtained a certificate from the state and submitted line count filings for the applicable periods.

To summarize, a competitive ETC is entitled to receive high-cost universal service support based on the per-line amounts received by the LECs serving the areas for which it was designated as an ETC. 47 C.F.R. §§ 54.807(a), 54.307(a). However, before a competitive ETC can receive such support, the FCC’s rules require, *inter alia*, that a high-cost certification by the state commission be filed in accordance with a set of deadlines provided in the rules. This certification must state that the company has committed to use its universal service support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 C.F.R. § 54.313(a).

Because of the schedule set forth in the rules, high-cost certifications must be on file well in advance of the calendar quarter for which support is received. Based on the schedule in Section

54.313(d)(3), the high-cost certification must be filed by October 1 for the carrier to be eligible for high-cost support for all four quarters of the following year; by January 1 for the second, third, and fourth quarters of that year; by April 1 for the third and fourth quarters of that year; and by July 1 for the fourth quarter of that year. Thus, even if the state files a high-cost certification on the date of the carrier's designation, a competitive ETC must endure a gap of several months or more during which it provides the supported services but receives no support.

In Highland's case, the Public Service Commission of West Virginia ("WVPSC") filed its initial high-cost certification on or before July 1, 2002 the first certification deadline following Highland's designation in May of 2002.<sup>6</sup> Thus, notwithstanding the WVPSC's compliance with all applicable deadlines, Highland would have begun receiving support as of December 1, 2002. In response to the Commission staff's advice, Highland requested that the WVPSC certify Highland as an ETC as of May 30, 2002. Following a proceeding, the WVPSC issued an Order dated April 26, 2004, certifying that as of May 30, 2002, Highland shall only use universal service fund support for the provision, maintenance and upgrading of facilities and services which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996.<sup>7</sup> The Order also includes a conclusion of law that the WVPSC has no objection to the FCC granting waiver which would enable Highland to receive the additional USF support requested in this petition.

On the date that Highland was granted ETC designation Highland did not have line count data on file with USAC which would enable USAC to begin support as of the date of ETC designation. Based upon the schedule in FCC Rule Sections 54.802(a) and 54.307(c), Highland would have had to have submitted interstate access and high cost line count data since March 31,

---

<sup>6</sup> A copy of the July 1, 2002 high-cost certification filed by the WVPSC is attached hereto as Exhibit B.

<sup>7</sup> A copy of the April 26, 2004 Commission Order issued by the WVPSC is attached as Exhibit C.

2001, a full eight months before Highland even filed their application for ETC status in West Virginia in order for support to begin flowing upon its designation. Therefore, in conjunction with its waiver request, Highland filed line counts that provide USAC with the necessary line count data going back to March 31, 2001.

In sum, without a grant of this Petition, Highland will forgo high-cost support for its provision of universal service between May 30, 2002 and December 1, 2002.

## **II. ARGUMENT**

The Commission has authority to waive its rules whenever there is "good cause" to do so. 47 C.F.R. 1.3; 1.925. Among other things, the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969) ("WAIT Radio"). As further explained in WAIT Radio, the Commission is charged with administration of its responsibilities consistent with the "public interest." That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the "public interest" for a broad range of situations, does not relieve it of an obligation to seek out the "public interest" in particular, individualized cases. In fact, the Commission's right to waive its rules is not unlike an obligation in that it is a sine quo non-to its ability to promulgate otherwise rigid rules. It is the necessary "safety valve" that makes the system work. See, WAIT Radio at 1157, 1159.

### **A. The Commission Should Accept Highland's Certification and Line Count Filings Received One Day Late.**

Denying interstate access funding to Highland on the basis of a certification received one day late would not serve the purpose of causing Highland to come into compliance with commitments made in its certifications. No party is prejudiced by acceptance of this certification and no party has

opposed Highland's request. Because of the long lead time between submission of line counts and the provision of funding, NECA and USAC have had full opportunity to review, compile and publish the data in anticipation of future funding requirements.

As a new ETC, June of 2002 was the first time Highland filed certifications and line count data. Highland planned accordingly by taking all of the necessary steps. These steps included the identification and learning of new software system, the development of new and complex billing reporting and the data filing procedures used by USAC. These steps were taken in anticipation of the stated deadlines. The only reason Highland missed the applicable deadlines is that, without the benefit of expert counsel, it acted under the mistaken belief that the rules requiring that filings be submitted meant that it could be postmarked by the due date.

Having represented FCC licensees for many years, undersigned counsel notes that it has always been the FCC's practice to act on a late-filed submission, either by returning it with an explanatory covering letter or formally rejecting the submission by letter or order. This is an important first step in providing parties with due process – an opportunity to understand that something is wrong, or a filing has been rejected, so that either corrective action or an appeal may be taken in a timely manner. Highland initially made a good faith effort to comply with the Commission's rules. Highland has since obtained FCC counsel to ensure that all of the necessary deadlines associated with its ETC status are met – and it has met every deadline since. More important, Highland is offering universal service to subscribers in West Virginia, and has actively worked with the WVPSC and its Consumer Advocate Division ("CAD") to create an innovative Lifeline and Link-up program for eligible customers. In connection with its grant of ETC status in West Virginia, Highland has provided to the WVPSC and CAD build out plans for its ETC service area that include the use of high-cost support.

Highland has developed specific capital investment plans for the use of these funds. These plans were developed in conjunction with input from the local communities and the director of the CAD. Highland commits to use the funds to build cell sites covering the communities of Paige/Kincaid in Fayette County, Pipestem in Summers County, and should there be sufficient funds remaining, Coal City in Raleigh County. These communities are very rural, do not receive service from any other wireless company and would not otherwise be built by Highland for at least another 2-3 years. Even this time frame is questionable given that these sites would be constructed with future USF and the future of the USF for wireless is currently uncertain given the Joint-Board ruling and the FCC's current proceedings. The CAD believes that construction in these unserved areas would serve the public interest.<sup>8</sup>

Given that Highland has taken on the obligations of an ETC as of May, 2002, it would be grossly unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request and consumers in the communities of Page/Kincaid, Pipestem and possibly Coal City who are expecting rapid deployment of facilities would be harmed by its denial.

Counsel for Highland is familiar with the practices and procedures adopted by USAC and NECA for processing line count filings. Over the past several years, USAC and NECA have accepted amendments to line count filings on a large number of occasions. The ability to amend line count filings is especially important for competitive ETCs. Newly designated ETCs often have difficulty compiling accurate line count data on a timely basis. Sometimes new data, such as for example, changed wire center boundaries of rural ILECs, is made available necessitating an

---

<sup>8</sup> See, correspondence from Highland's counsel, Robert R. Rodecker, to Mr. Billy Jack Gregg dated June 18, 2004 attached hereto as Exhibit D.

amendment. By accepting amendments, USAC and NECA encourage and help to ensure that competitive ETCs are providing the most accurate data possible into the system so that high-cost support can be accurately tracked and distributed.

USAC and NECA routinely accept amended line count filings weeks, even months, after the deadline for filing. Given that the current time interval between submission and payment is nine to twelve months, it is clear that timely filing of line count data is not essential to enable NECA to distribute support to competitive ETCs. It is therefore unlikely that data submitted one or two days late has prejudiced NECA's ability to carry out its responsibilities.

The Commission has previously waived its rules in the manner requested by Highland. For example, in the case of Smith Bagley, Inc. ("SBI"), the Commission waived FCC Rule Section 54.809(c), finding that SBI was newly eligible to receive support, the company immediately remedied its omission upon discovery, and represented that it continued to comply with the commitments made in its late-filed certification.<sup>9</sup> These special circumstances are present in the instant case.

Highland was newly eligible to receive support at the time of the late filings. It diligently prepared its filings. It remedied its omission immediately upon discovery. And Highland has complied with its obligations under the universal service program, which is intended to promote access to advanced services in areas where telephone subscribership has been historically low. Highland is entitled to interstate access and high-cost support and such funding will enable Highland to construct new facilities to provide quality service to West Virginians. Without interstate access and high-cost support, Highland will not be able to provide the planned cell site coverage to the

---

<sup>9</sup> *In the Matter of Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission's Rules and Regulations*, CC Docket 96-45, DA 01-1911 (Released August 15, 2001) ("Smith Bagley").

communities of Page/Kincaid, Pipestem and possibly Coal City.

Furthermore, it is axiomatic that before an administration agency can sanction an entity, it must provide clear notice of the rule at issue, how it is being enforced and what is the sanction for any infraction. See, e.g., *Salzer v. FCC*, 778 F2d 869, 877 (D.C. Cir. 1985). Here, rigid enforcement of the rule would present a number of notice issues. For example, nowhere in Section 54.307 is any sanction provided. Without such notice, due process would be violated were the most severe sanction possible (i.e., loss of all rights to payment for the question at issue) imposed. Similarly, rigid enforcement would constitute a stark revision of the prior policy of granting waivers upon a reasonable showing. These notice infirmities add yet additional reasons for grant of the waiver request here at issue.

**B. The WVPSC Could Not File a Certification Until Highland Was Designated as an ETC, Thus Support Could Not Timely Commence Under the Rules.**

With respect to the high-cost certification and line count filings to be filed by the WVPSC, the rules tying high-cost support payments to the filing of certifications and line counts several months beforehand would be impossible to comply with, and would effectively nullify the WVPSC's designation of Highland from May, 2002 through the remainder of 2002. The WVPSC fully complied with the rules by filing an initial high-cost certification on or before the first certification deadline following Highland's designation. Yet, the timing of Highland's designation creates the unintended consequence of denying Highland high-cost support for over six months past its designation as an ETC.

The underlying purpose of the rule would not be served by its strict application in the instant case. The FCC's certification rules are intended to cause states to place into the record *prima facie* evidence that ETCs have complied, and will comply with, the FCC's requirements with respect to

the use of federal universal service support. At the time of the rule's adoption, the FCC did not consider the possible designation of new ETCs in the middle of a year and the need to have support commence on the same date that universal service obligations commenced.

The Commission has repeatedly recognized that designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas.<sup>10</sup> For newly designated ETCs, prompt commencement of high-cost support is crucial for constructing and upgrading networks to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service. Since the majority of newly designated ETCs are competitive carriers, strict enforcement of Sections 54.313(d)(3) and 54.314 would unfairly handicap new entrants, including carriers offering services using new technologies.

Finally, denial of support that would result from strict application of Sections 54.313(d)(3) and 54.314 would be inconsistent with the Commission's goal of competitive neutrality, which the Commission has stressed as a "fundamental principle of the Commission's universal service policies."<sup>11</sup>

The Commission has granted similar requests in the past. For example, the Commission granted to RFB Cellular, Inc. ("RFB") a limited waiver of, *inter alia*, the annual high-cost certification deadlines in Section 54.313(d) of the Commission's rules in order to allow RFB to

---

<sup>10</sup> See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18137 (2001) ("Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies."); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (2000) ("[C]ompetition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers . . . by creating incentives to ensure that quality services are available at 'just, reasonable, and affordable rates.'") (footnote omitted).

<sup>11</sup> *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003) ("Guamcell Waiver

begin receipt of high-cost universal service support from the date on which it received its ETC designation.<sup>12</sup> In deciding to grant RFB's waiver request, the Commission agreed that denying high-cost support to the newly-designated ETC merely because of the timing of its ETC designation would undermine the FCC's well-established goal of competitive neutrality for universal service.<sup>13</sup> In addition, while acknowledging that the rule tying receipt of support to the prior filing of a certification is intended to provide USAC with sufficient time to process the certifications before payment, the FCC concluded that the "special circumstances" of an ETC being designated after a filing deadline "outweigh any processing difficulties that USAC may face as a result of the late-filed certification."<sup>14</sup>

The same special circumstances are present in the instant case. As with RFB, Highland seeks a limited waiver of the certification filing and line count filing deadlines that occurred prior to the company's designation as an ETC. As with that case, Highland "could not have met, under any circumstances," the January 1, 2002, or April 1, 2002, high-cost certification filing deadlines because it had not yet been designated as an ETC.<sup>15</sup> In the *RFB Waiver Order*, the Commission concluded that a waiver of the pre-designation filing deadlines was warranted, appropriate, and consistent with the public interest, and that "[i]t would be onerous . . . to deny an ETC receipt of universal service support for an entire quarter, as a result of a particular ETC designation having

---

*Order*").

<sup>12</sup> *RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 02-3316 (WCB rel. Dec. 4, 2002) ("*RFB Waiver Order*"); see also, *Midwest Wireless Iowa, L.L.C., Petition for Waiver of Sections 54.313(d) and 314(d) of the Commission's Rules and Regulations*, DA 04-1688 (Tel. Access Policy Div., June 14, 2004); *Smith Bagley, supra*.

<sup>13</sup> *RFB Waiver Order*, at ¶ 9.

<sup>14</sup> *Id.* at ¶ 8.

<sup>15</sup> *Id.*



EXHIBIT A

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1111 NINETEENTH STREET, N.W.

SUITE 1200

WASHINGTON, D.C. 20036

(202) 857-3500

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ  
ELIZABETH R. SACHS  
GEORGE L. LYON, JR.  
JOEL R. KASWELL  
PAMELA L. GIST  
DAVID A. LAFURIA  
MARILYN SUCHECKI MENSE  
B. LYNN F. RATNAVALE  
TODD SLAMOWITZ  
DAVID M. BRIGLIA  
STEVEN M. CHERNOFF

\* NOT ADMITTED IN D.C.

February 10, 2004

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEROY A. ADAM  
LEILA REZANAVAZ

—  
OF COUNSEL

JOHN J. MCAVOY  
J.K. HAGE III+  
LEONARD S. KOLSKY+  
HON. GERALD S. MCGOWAN

TELECOPIER  
(202) 857-5747

<http://www.fcclaw.com>

WRITER'S DIRECT DIAL

(202) 828-9476  
[lratnavale@fcclaw.com](mailto:lratnavale@fcclaw.com)

**VIA FEDERAL EXPRESS**

USAC

444 Hoes Lane

RRC 4A1060

Piscataway, NJ 08854

**Re: Highland Cellular L.L.C. (SAC 209003)  
Line Counts for High Cost Loop Fund Support  
Lines as of September 30, 2001 (West Virginia)**

Dear Sir or Madam:

On behalf of Highland Cellular L.L.C. ("Highland Cellular"), and pursuant to 47 C.F.R. 54.307, we submit this line count data for purposes of calculating high cost loop fund support. Below is the quarterly update for lines active as of September 30, 2001.

Highland Cellular provides loops via its own network infrastructure and has been granted ETC status throughout the non-rural portion its service area. Highland Cellular is submitted this line count in conjunction with a waiver request to receive retroactive support.

February 10, 2004  
Page 2

<b>Incumbent Carrier Name</b>	<b>Incumbent Carrier SAC</b>	<b>Wire Center CLLI Code</b>	<b>Wire Center Name</b>	<b>Total Lines</b>
Verizon, WV	205050	ALDRWVAD	Alderson	381
		ANSTWVAN	Ansted	190
		BCKLWVWD	Beckley	5740
		FLTPWVFT	Flat Top	373
		FYVLWVMP	Fayetteville	893
		GLDNWVGD	Glen Daniel	330
		GNVLWVGV	Greenville	192
		GYBRWVGB	Gauley Bridge	27
		HITNWVMM	Hinton	800
		LWBGWVMW	Lewisburg	1816
		MDBRWVMB	Meadow Bridge	113
		MLNSWVGY	Mullins	222
		MTGMWVMG	Montgomery	149
		MTHPWVTN	Mount Hope	792
		OKHLWVCH	Oak Hill	1263
		PRTWVPT	Peterstown	183
		RANLWVTR	Rainelle	452
		RCWDWVEA	Richwood	92
		SHSPWVSS	Shady Spring	1021
		SOPHWVSP	Sophia	865
		UNINWVWB	Union	476
		WHVLWVFO	Whitesville	108
		WSSPWVDR	White Sulphur Springs	484
			<b>TOTAL</b>	<b>16,962</b>

Please return a date-stamped receipt copy of this letter in the envelope provided. Contact the undersigned at 202-828-9476 if any questions arise concerning this filing or if you require any additional information.

Sincerely,



David A. LaFuria  
B. Lynn F. Ratnavale  
Counsel for Highland Cellular L.L.C. (W. Virginia)

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED  
1111 NINETEENTH STREET, N.W.  
SUITE 1200  
WASHINGTON, D.C. 20036  
(202) 857-3500

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ  
ELIZABETH R. SACHS  
GEORGE L. LYON, JR.  
JOEL R. KASWELL  
PAMELA L. GIST  
DAVID A. LAFURIA  
MARILYN SUCHECKI MENSE  
B. LYNN F. RATNAVALE  
TODD SLAMOWITZ  
DAVID M. BRIGLIA  
STEVEN M. CHERNOFF

\* NOT ADMITTED IN D.C.

February 10, 2004

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEROY A. ADAM  
LEILA REZANAVAZ  
—  
OF COUNSEL  
JOHN J. McAVOY  
J.K. HAGE III+  
LEONARD S. KOLSKY+  
HON. GERALD S. McGOWAN

TELECOPIER  
(202) 857-5747

<http://www.fcclaw.com>

WRITER'S DIRECT DIAL

(202) 828-9476

[lratnavale@fcclaw.com](mailto:lratnavale@fcclaw.com)

**VIA FEDERAL EXPRESS**

USAC  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

**Re: Highland Cellular L.L.C. (SAC 209003)  
Line Counts for Interstate Access Fund Support  
December 31, 2001**

Dear Sir or Madam:

On behalf of Highland Cellular L.L.C. ("Highland Cellular"), and pursuant to 47 C.F.R. 54.802, we submit this line count data for purposes of calculating interstate access support as of December 31, 2001 for those study areas in Highland Cellular's proposed designated ETC area served by price cap local exchange carriers.

Highland Cellular provides loops via its own network infrastructure and has been granted ETC status throughout the non-rural portion its service area. Highland Cellular is submitted this line count in conjunction with a waiver request to receive retroactive support.

**PRICE CAP CARRIERS**

<b>Study Area (SAC)</b>	<b>Single/Residential Lines</b>	<b>Multi-line/Business Lines</b>
Verizon West Virginia, Inc. (205050)		
UNE Zone 1	5,101	865
UNE Zone 2	6,598	482
UNE Zone 3	4,525	292
<b>SubTotals:</b>	<b>16,224</b>	<b>1,639</b>

**GRAND TOTAL: 17,863**

Please return a date-stamped receipt copy of this letter in the envelope provided. Contact the undersigned at 202-828-9476 if any questions arise concerning this filing or if you require any additional information.

Sincerely,



David A. LaFuria  
B. Lynn F. Ratnavale  
Counsel for Highland Cellular L.L.C. (W. Virginia)

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED  
1111 NINETEENTH STREET, N.W.  
SUITE 1200  
WASHINGTON, D.C. 20036  
(202) 857-3500

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ  
ELIZABETH R. SACHS  
GEORGE L. LYON, JR.  
JOEL R. KASWELL  
PAMELA L. GIST  
DAVID A. LAFURIA  
MARILYN SUCHECKI MENSE  
B. LYNN F. RATNAVALE  
TODD SLAMOWITZ  
DAVID M. BRIGLIA  
STEVEN M. CHERNOFF

\* NOT ADMITTED IN D.C.

February 10, 2004

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEROY A. ADAM  
LEILA REZANAVAZ  
—  
OF COUNSEL  
JOHN J. MCAVOY  
J.K. HAGE III+  
LEONARD S. KOLSKY+  
HON. GERALD S. MCGOWAN

TELECOPIER  
(202) 857-5747

<http://www.fcclaw.com>

WRITER'S DIRECT DIAL

(202) 828-9476  
[lratnavale@fcclaw.com](mailto:lratnavale@fcclaw.com)

**VIA FEDERAL EXPRESS**

USAC  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

**Re: Highland Cellular L.L.C. (SAC 209003)  
Line Counts for High Cost Loop Fund Support  
Lines as of March 31, 2001 (West Virginia)**

Dear Sir or Madam:

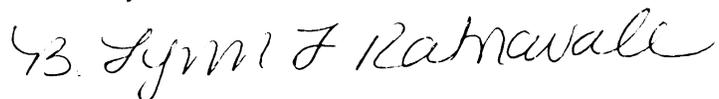
On behalf of Highland Cellular L.L.C. ("Highland Cellular"), and pursuant to 47 C.F.R. 54.307, we submit this line count data for purposes of calculating high cost loop fund support. Below is the quarterly update for lines active as of March 31, 2001.

Highland Cellular provides loops via its own network infrastructure and has been granted ETC status throughout the non-rural portion its service area. Highland Cellular is submitted this line count in conjunction with a waiver request to receive retroactive support.

<b>Incumbent Carrier Name For all listed Wire Centers</b>	<b>Incumbent Carrier SAC</b>	<b>Wire Center CLLI Code</b>	<b>Wire Center Name</b>	<b>Total Lines</b>
Verizon, WV	205050	ALDRWVAD	Alderson	361
		ANSTWVAN	Ansted	167
		BCKLWVWD	Beckley	5096
		FLTPWVFT	Flat Top	346
		FYVLWVMP	Fayetteville	791
		GLDNWVGD	Glen Daniel	273
		GNVLWVGV	Greenville	160
		GYBRWVGB	GauleyBridge	22
		HITNWVMM	Hinton	754
		LWBGWVMW	Lewisburg	1668
		MDBRWVMB	Meadow Bridge	104
		MLNSWVGY	Mullins	203
		MTGMWVMG	Montgomery	148
		MTHPWVTN	Mount Hope	649
		OKHLWVCH	Oak Hill	1112
		PRTWWVPT	Peterstown	162
		RANLWVTR	Rainelle	417
		RCWDWVEA	Richwood	90
		SHSPWVSS	Shady Spring	933
		SOPHWVSP	Sophia	718
		UNINWVWB	Union	444
		WHVLWVFO	Whitesville	86
		WSSPWVDR	White Sulphur Springs	444
			<b>TOTAL</b>	<b>15,148</b>

Please return a date-stamped receipt copy of this letter in the envelope provided. Contact the undersigned at 202-828-9476 if any questions arise concerning this filing or if you require any additional information.

Sincerely,



David A. LaFuria  
B. Lynn F. Ratnavale  
Counsel for Highland Cellular L.L.C. (W. Virginia)

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1111 NINETEENTH STREET, N.W.

SUITE 1200

WASHINGTON, D.C. 20036

(202) 857-3500

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ  
ELIZABETH R. SACHS  
GEORGE L. LYON, JR.  
JOEL R. KASWELL  
PAMELA L. GIST  
DAVID A. LAFURIA  
MARILYN SUCHECKI MENSE  
B. LYNN F. RATNAVALE  
TODD SLAMOWITZ  
DAVID M. BRIGLIA  
STEVEN M. CHERNOFF

\* NOT ADMITTED IN D.C.

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEROY A. ADAM  
LEILA REZANAVAZ  
—  
OF COUNSEL  
JOHN J. MCAVOY  
J.K. HAGE III+  
LEONARD S. KOLSKY+  
HON. GERALD S. MCGOWAN

TELECOPIER  
(202) 857-5747

<http://www.fcclaw.com>

WRITER'S DIRECT DIAL

(202) 828-9476

[lratnavale@fcclaw.com](mailto:lratnavale@fcclaw.com)

February 10, 2004

**VIA FEDERAL EXPRESS**

USAC  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

**Re: Highland Cellular L.L.C. (SAC 209003)  
Line Counts for High Cost Loop Fund Support  
Lines as of June 30, 2001 (West Virginia)**

Dear Sir or Madam:

On behalf of Highland Cellular L.L.C. ("Highland Cellular"), and pursuant to 47 C.F.R. 54.307, we submit this line count data for purposes of calculating high cost loop fund support. Below is the quarterly update for lines active as of June 30, 2001.

Highland Cellular provides loops via its own network infrastructure and has been granted ETC status throughout the non-rural portion its service area. Highland Cellular is submitted this line count in conjunction with a waiver request to receive retroactive support.

February 10, 2004

Page 2

<b>Incumbent Carrier Name</b> <b>For all listed Wire Centers</b>	<b>Incumbent</b> <b>Carrier SAC</b>	<b>Wire Center</b> <b>CLLI Code</b>	<b>Wire Center</b> <b>Name</b>	<b>Total</b> <b># of Lines</b>
Verizon, WV	205050	ALDRWVAD	Alderson	380
		ANSTWVAN	Ansted	182
		BCKLWVWD	Beckley	5582
		FLTPWVFT	Flat Top	345
		FYVLWVMP	Fayetteville	850
		GLDNWVGD	Glen Daniel	311
		GNVLWVGV	Greenville	186
		GYBRWVGB	Gaulcy Bridge	25
		HITNWVMM	Hinton	781
		LWBGWVMW	Lewisburg	1768
		MDBRWVMB	Meadow Bridge	101
		MLNSWVGY	Mullins	214
		MTGMWVMG	Montgomery	153
		MTHPWVTN	Mount Hope	725
		OKHLWVCH	Oak Hill	1189
		PRTWWVPT	Peterstown	179
		RANLWVTR	Rainelle	431
		RCWDWVEA	Richwood	92
		SHSPWVSS	Shady Spring	990
		SOPHWVSP	Sophia	793
		UNINWVWB	Union	478
		WHVLWVFO	Whitesville	103
		WSSPWVDR	White Sulphur Springs	478
			<b>TOTAL</b>	<b>16,336</b>

Please return a date-stamped receipt copy of this letter in the envelope provided. Contact the undersigned at 202-828-9476 if any questions arise concerning this filing or if you require any additional information.

Sincerely,



David A. LaFuria

B. Lynn F. Ratnavale

Counsel for Highland Cellular L.L.C. (W. Virginia)

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED  
1111 NINETEENTH STREET, N.W.  
SUITE 1200  
WASHINGTON, D.C. 20036  
(202) 857-3500

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ  
ELIZABETH R. SACHS  
GEORGE L. LYON, JR.  
JOEL R. KASWELL  
PAMELA L. GIST  
DAVID A. LAFURIA  
MARILYN SUCHECKI MENSE  
B. LYNN F. RATNAVALE  
TODD SLAMOWITZ  
DAVID M. BRIGLIA  
STEVEN M. CHERNOFF

+ NOT ADMITTED IN D.C.

February 10, 2004

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEROY A. ADAM  
LEILA REZANAVAZ  
—  
OF COUNSEL  
JOHN J. McAVOY  
J.K. HAGE III+  
LEONARD S. KOLSKY+  
HON. GERALD S. McGOWAN

TELECOPIER  
(202) 857-5747

<http://www.fcclaw.com>

WRITER'S DIRECT DIAL

(202) 828-9476

[lratnavale@fcclaw.com](mailto:lratnavale@fcclaw.com)

**VIA FEDERAL EXPRESS**

USAC  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

**Re: Highland Cellular L.L.C. (SAC 209003)  
Line Counts for Interstate Access Fund Support  
September 30, 2001**

Dear Sir or Madam:

On behalf of Highland Cellular L.L.C. ("Highland Cellular"), and pursuant to 47 C.F.R. 54.802, we submit this line count data for purposes of calculating interstate access support as of September 30, 2001 for those study areas in Highland Cellular's proposed designated ETC area served by price cap local exchange carriers.

Highland Cellular provides loops via its own network infrastructure and has been granted ETC status throughout the non-rural portion its service area. Highland Cellular is submitted this line count in conjunction with a waiver request to receive retroactive support.

February 10, 2004

Page 2

**PRICE CAP CARRIERS**

<b>Study Area (SAC)</b>	<b>Single/Residential Lines</b>	<b>Multi-line/Business Lines</b>
Verizon West Virginia, Inc. (205050)		
UNE Zone 1	4,929	811
UNE Zone 2	6,249	485
UNE Zone 3	4,260	228

**SubTotals:**

**15,438**

**1,524**

**GRAND TOTAL: 16,962**

Please return a date-stamped receipt copy of this letter in the envelope provided. Contact the undersigned at 202-828-9476 if any questions arise concerning this filing or if you require any additional information.

Sincerely,



David A. LaFuria

B. Lynn F. Ratnavale

Counsel for Highland Cellular L.L.C. (W. Virginia)

EXHIBIT B

DOCKET FILE COPY ORIGINAL

Public Service Commission  
Of West Virginia

RECEIVED & INSPECTED

JUL 1 2002

FCC - MAILROOM

201 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323



James D. Williams  
Chairman

June 28, 2002

**VIA OVERNIGHT DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**Re: CC Docket No. 96-45: Certification Under 47 U.S.C. § 254(e).**

Dear Secretary Dortch:

The Public Service Commission of West Virginia (WVPSC) hereby submits its certification in accordance with 47 C.F.R. §§ 54.313 & .314. These sections of the Commission's rules requires state certification in order to allow incumbent local exchange carriers (incumbent LECs or ILECs) and competitive LECs that have been designated as eligible telecommunications carriers (ETCs), to receive federal universal service support pursuant to 47 C.F.R. §§ 54.301 to .314.

As required by 47 C.F.R. §§ 54.313(a) & .314(a), the WVPSC certifies that the following carriers in West Virginia are eligible to receive federal support during October 1, 2002 to December 31, 2002: Highland Cellular, Inc. By recommended decision entered May 10, 2002, which became a final order of the WVPSC on May 20, 2002, Highland - a

(304) 340-0307

(304) 340-3758 fax

JWILLIAMS@PSC.STATE.WV.US

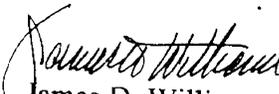
No. of Copies rec'd 0  
List ABCDE

**Ms. Marlene H. Dortch, Secretary**  
**June 28, 2002**  
**Page Two**

commercial mobile radio services provider (CMRS) – was designated an ETC by the WVPSC. See “Recommended Decision,” Highland Cellular, Inc., Case No. 01-1604-T-PC (May 10, 2002; Final May 30, 2002). The WVPSC further certifies that Highland will use federal universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act of 1934, as amended. This certification is the product of formal proceedings before the WVPSC. See “Commission Order,” Petition to Initiate a General Investigation Re: Certification of the Disposition of Federal Universal Service Funding for Calendar Year 2002, Case No. 01-1129-T-PC (June 28, 2002) (copy attached).<sup>1</sup>

On behalf of the people of West Virginia, the WVPSC expresses its appreciation for the Commission’s efforts in arriving at a mechanism to provide support that will reduce monthly rates for the bulk of consumers and make those rates more comparable to rates paid by consumers in other parts of the Nation.

Very truly yours,

  
James D. Williams  
Chairman

JDW/raf

Enclosures

cc: Irene Flannery, Universal Service Administrative Company  
2120 L Street, NW  
Suite 600  
Washington, DC 20037  
Via Fax: (202) 776-0080

---

<sup>1</sup>WVPSC orders and decisions can also be viewed or downloaded from the following link on the Commission’s Internet website: <http://www.psc.state.wv.us/orders>.

RECEIVED & INSPECTED

JUL 1 2002

FCC - MAILROOM

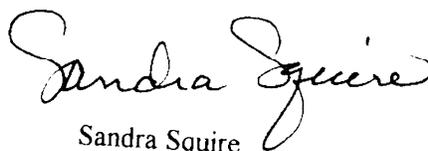
PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

CERTIFICATION OF TRUE COPY

RE: CASE NO. 01-1129-T-PC  
GENERAL INVESTIGATION REGARDING Certification for the disposition  
of federal universal service funding by incumbent local exchange telecommunications  
carriers and competitive eligible telecommunications carriers in West Virginia for  
calendar year 2002.

I, Sandra Squire, Executive Secretary of the Public Service Commission of West Virginia, certify  
that the attached is a true copy of the June 28, 2002, Commission Order in the above proceeding, as the  
same appears on file and of record in my office.

Given under my hand and the seal of the Public Service Commission of West Virginia, in the City of  
Charleston, Kanawha County, this 29th day of June, 2002.



Sandra Squire  
Executive Secretary

SS/s  
Attachment

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 28<sup>th</sup> day of June, 2001.

CASE NO. 01-1129-T-PC (REOPENED)

GENERAL INVESTIGATION REGARDING  
Certification for the disposition of federal universal  
service funding by incumbent local exchange  
telecommunications carriers and competitive  
eligible telecommunications carriers in West Virginia  
for calendar year 2002.

**COMMISSION ORDER**

In September 2001, the Commission certified the disposition of federal universal service funding by incumbent local exchange carriers (LECs) and competitive eligible telecommunications carriers (ETCs). Since that time, another carrier has become an ETC. Accordingly, in this order, the Commission certifies the disposition of federal universal service funding by the newest ETC.

**BACKGROUND**

On September 26, 2001, the Commission certified to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) that several LECs and ETCs were eligible to continue to receive federal universal service support for the entire calendar year 2002, based upon their verified statements that they use federal universal service funds only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act of 1934, as amended.<sup>1</sup> Comm'n Order p. 3, GI Re: Certification of the Disposition of Universal Service Funds, Case No. 01-1129-T-PC (Sept. 26, 2001).

---

<sup>1</sup> The Telecommunications Act of 1934 was substantially modified in 1996. Therefore, the Commission and the parties refer to the statute with the terms "Telecommunications Act of 1996" and "Telecommunications Act of 1934, as amended" interchangeably in this case.

On May 30, 2002, Highland Cellular, Inc. was designated, pursuant to 47 U.S.C. § 241(e), as an ETC by the Commission. Comm'n Order p. 8, Highland Cellular, Inc., Case No. 01-1604-T-PC (Rec. Dec. May 10, 2002, final May 30, 2002).

On June 28, 2002, Highland filed a verified statement that it will use federal universal service fund support only for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996. Verified Statement p. 1.

On June 28, 2002, Commission Staff recommended that this proceeding be reopened. 2d Further Final Joint Staff Memorandum pp. 1-2. Staff recommended that the Commission find that Highland is using federal universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended. Id. pp. 1-2. Staff also advised it was appropriate for the Commission to certify to the FCC and the USAC that Highland is eligible to receive federal universal service support, based on its verified statement. Id. p. 2. For Highland to receive USF support beginning with the fourth quarter (October 1, 2002), the Commission must issue an order consistent with Staff's recommendation and file the letters with the FCC and USAC by July 1, 2002, Staff said. Id. p. 2.

### DISCUSSION

This case should be reopened to consider Highland's petition.

The Commission recently named Highland as an ETC. As recommended by Staff, the Commission finds that Highland will use USF support only for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996. Accordingly, it is appropriate for the Commission to certify to the FCC and the USAC that Highland is eligible to receive federal universal service support, based on Highland's verified statement. Id. p. 2.

Due to the approaching deadline for Highland to be eligible for USF support beginning in the fourth quarter of 2002, this matter should receive expedited treatment.

### FINDINGS OF FACT

1. On May 30, 2002, Highland was designated, pursuant to 47 U.S.C. § 241(e), as an ETC by the Commission. Comm'n Order p. 8, Highland Cellular, Case No. 01-1604-T-PC (Rec. Dec. May 10, 2002, final May 30, 2002).

2. On June 28, 2002, Highland filed a verified statement that it will use federal universal service fund support only for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996. Verified Statement p. 1.

3. On June 28, 2002, Commission Staff recommended that Highland's petition to reopen be granted. 2d Further Final Joint Staff Memorandum pp. 1-2.

### CONCLUSIONS OF LAW

1. Since the Commission recently named Highland an ETC and Highland will use USF support only for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996, it is reasonable to certify, as recommended by Staff, that Highland is eligible to receive federal universal service support. Id. p. 2.

2. Due to the approaching deadline for Highland to be eligible for fourth quarter USF support, this matter should receive expedited treatment.

### ORDER

IT IS THEREFORE ORDERED that this case is reopened.

IT IS FURTHER ORDERED that Highland shall only use universal service fund support for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that it is appropriate to certify to the FCC and USAC that Highland is eligible to receive federal universal service support, beginning in the fourth quarter of calendar year 2002, based on the verified statement submitted to the Commission.

IT IS FURTHER ORDERED that this proceeding be removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

CLW/ljm  
011129cc.wpd

A True Copy, Teste:

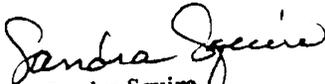
  
Sandra Squire  
Executive Secretary

EXHIBIT C

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 26<sup>th</sup> day of April, 2004.

CASE NO. 01-1129-T-GI (REOPENED)

GENERAL INVESTIGATION REGARDING  
CERTIFICATE OF DISPOSITION OF FEDERAL  
UNIVERSAL SERVICE FUNDING BY  
INCUMBENT LOCAL EXCHANGE CARRIERS,  
ETC.

**COMMISSION ORDER**

On September 26, 2001, the Commission certified to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) that several incumbent local exchange carriers (LECs) and competitive eligible telecommunications carriers (ETCs) were eligible to continue to receive federal universal service support for the entire calendar year 2002, based upon their verified statements that they use federal universal service funds only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act of 1934, as amended.<sup>1</sup> Comm'n Order p. 3, GI re: Certification of the Disposition of Universal Service Funds, Case No. 01-1129-T-PC (Sept. 26, 2001).

On May 30, 2002, Highland Cellular, Inc. was designated, pursuant to 47 U.S.C. § 241(e), as an ETC by the Commission. Comm'n Order p. 8, Highland Cellular, Inc., Case No. 01-1604-T-PC (Rec. Dec. May 10, 2002, final May 30, 2002).

---

<sup>1</sup>The Telecommunications Act of 1934 was substantially modified in 1996. Therefore, the Commission and the parties refer to the statute with the terms "Telecommunications Act of 1996" and "Telecommunications Act of 1934, as amended" interchangeably in this case.

On June 28, 2002, Highland filed a verified statement that it will use federal universal service fund support only for the provision, maintenance and upgrading of facilities and services which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996. Verified Statement p. 1.

On June 28, 2002, the Commission reopened Case No. 01-1129-T-GI and certified to the FCC and the USAC that Highland was eligible to receive federal universal service support beginning in the fourth quarter of calendar year 2002, based upon the verified statement submitted to the Commission. Comm'n Order p. 3, GI re: Certification of the Disposition of Universal Service Funds, Case No. 01-1129-T-GI (June 28, 2002).

On January 20, 2004, Highland filed a petition to reopen this proceeding for the limited purpose of certifying that it should be eligible for receipt of universal service funding from the time of the Commission's grant of ETC status to Highland on May 30, 2002, in Case No. 01-1604-T-PC. Highland recently learned of an FCC Order, entered December 4, 2002, which granted RFB Cellular, Inc.'s request to allow it to receive high-cost universal service support as of the date the Michigan Public Service Commission designated RFB Cellular as an ETC. (*Citing In the Matter of Federal-State Joint Board on Universal Service RFB Cellular, Inc.*, CC Docket No. 96-45). In order to obtain necessary waivers from the FCC, in accordance with *RFB Cellular*, Highland has asked this Commission to reopen this proceeding and enter an order determining that Highland shall only use universal service fund support for purposes consistent with 47 U.S.C. §254(e), and certifying to the FCC and USAC that Highland is eligible to receive federal universal service support beginning on May 30, 2002, the date of its ETC designation. Highland has also asked the Commission to include in its letter of transmission to the FCC that it does not object to Highland's petition for waiver of the certification filing deadlines set forth in 47 C.F.R. Section 54.313.

On March 5, 2004, Commission Staff (Staff) filed a Final Joint Staff Memorandum, recommending the matter be reopened and the relief requested be granted.

### DISCUSSION

This case should be reopened to consider Highland's petition.

The Commission agrees with the reasoning of Staff and Highland and believes it is appropriate to certify that Highland would be eligible, given the appropriate waivers by the FCC of applicable regulations, for receipt of universal service funding from the time of the Commission's grant of ETC status to Highland on May 30, 2002, in Case No. 01-1604-T-PC.

## FINDINGS OF FACT

1. On May 30, 2002, Highland was designated, pursuant to 47 U.S.C. § 241(e), as an ETC by the Commission. Comm'n Order p. 8, Highland Cellular, Case No. 01-1604-T-PC (Rec. Dec. May 10, 2002, final May 30, 2002).
2. On June 28, 2002, Highland filed a verified statement that it will use federal universal service fund support only for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 245(e) of the Telecommunications Act of 1996. Verified Statement p. 1.
3. On June 28, 2002, the Commission reopened Case No. 01-1129-T-GI and certified to the FCC and the USAC that Highland was eligible to continue to receive federal universal service support beginning in the fourth quarter of calendar year 2002, based upon the verified statement submitted to the Commission. Comm'n Order p. 3, GI re: Certification of the Disposition of Universal Service Funds, Case No. 01-1129-T-GI (June 28, 2002).
4. On January 20, 2004, Highland filed a petition to reopen this proceeding for the limited purpose of certifying that it should be eligible for receipt of universal service funding from the time of the Commission's grant of ETC status to Highland on May 30, 2002, in Case No. 01-1604-T-PC.
5. On March 5, 2004, Staff recommended this matter be reopened and the relief requested be granted.

## CONCLUSION OF LAW

Highland was granted status as an ETC by this Commission on May 30, 2002. Subsequent to the granting of ETC status to Highland, on June 28, 2002, the Commission issued an Order and certified that Highland shall use universal service fund support only for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996. Given the appropriate waivers by the FCC of applicable regulations and based on the records of this Commission, Highland would be eligible to receive federal universal service support as of May 30, 2002.

## ORDER

IT IS, THEREFORE, ORDERED that this case is reopened.

IT IS FURTHER ORDERED that Highland Cellular, Inc. shall only use universal service fund support for the provision, maintenance and upgrading of facilities and services for which support is necessary, consistent with Section 254(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that it is appropriate to certify to the FCC and USAC that Highland Cellular, Inc. would be eligible, given the appropriate FCC waivers of applicable regulations, to receive federal universal service support beginning on May 30, 2002, based on the verified statement submitted to the Commission.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

TBS/ljm  
011129cd.wpd

A True Copy, Teste:



Sandra Squire  
Executive Secretary

EXHIBIT D

LAW OFFICES  
ROBERT R. RODECKER  
BB&T SQUARE  
300 SUMMERS STREET, SUITE 1230  
POST OFFICE BOX 3713  
CHARLESTON, WEST VIRGINIA 25337

ROBERT R. RODECKER  
RODECKER@MINDSPRING.COM

—  
JAMES V. KELSH  
OF COUNSEL  
KELSHLAW@YAHOO.COM

AREA CODE 304  
343-1354  
—  
FACSIMILE  
343-1357

June 18, 2004

Billy Jack Gregg, Esquire  
Consumer Advocate Division  
700 Union Building  
723 Kanawha Boulevard, East  
Charleston, WV 25301

RE: HIGHLAND CELLULAR, INC

Dear Billy Jack:

I want to thank you for taking the time to meet with Jake Turner of Highland Cellular, LLC ("Highland") and me this afternoon. By this letter, I would like to memorialize the content of our discussions.

As I informed you, Highland is in the process of petitioning the Federal Communications Commission ("FCC"), for a waiver of certain filing requirements applicable to submission of line count data to the FCC. Due to an inadvertent error on its part, Highland believed that information it submitted to the FCC in 2002 had been timely filed, when in fact the information was not received on the actual due dates. As a result of this error, Highland has been deemed ineligible to receive several months of high-cost support.

Our meeting today, in addition to keeping you informed of Highland's use of high cost support, was for the purpose of informing you of Highland's commitment as to the use of funds that it would receive if the FCC grants the requested waiver. If the waiver is granted, Highland will use the additional funds that it receives to construct two, and possibly three, cell sites in currently unserved areas. The communities that Highland would propose to serve with such funds are Paige/Kincaid in Fayette County and Pipestem in Summers County. If there are sufficient funds, Highland will also construct facilities to serve Coal City in Raleigh County.

Billy Jack Gregg  
Page Two  
June 18, 2004

As we discussed, it would be in the public interest to construct these three sites which are in unserved areas of the state which could greatly benefit from this service. By committing to use the money it would receive if the waiver is granted, in the manner set forth herein, Highland will be advancing the otherwise projected construction date by two to three years.

Thank you again for meeting with us. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob", written in a cursive style.

Robert R. Rodecker

RRR/s  
cc: Tom Attar

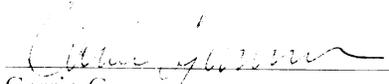
## DECLARATION UNDER PENALTY OF PERJURY

I, Carrie Gumm, do hereby declare under penalty of perjury as follows:

1. At the time, I was the Manager of Business Operations of Highland Cellular, Inc. ("Highland").
2. This Declaration is submitted in support of Highland's Supplement to Petition for Waiver ("Petition").
3. At the time, I was personally responsible for preparing and filing all certifications and line count submissions that are required as a result of Highland's ETC designation in West Virginia.
4. I am not an attorney, nor did I receive advice from counsel with respect to FCC rules or filing procedures in making the filings referenced in the Petition.
5. I personally prepared the necessary reports to collect the March 31 customer data from Highland's billing system well in advance of the June 30, 2002 deadline.
6. I researched the USAC requirements for the initial filing and I reviewed the FCC Rules regarding submission of line count and certification filings.
7. I personally placed in the United States Postal Service the Interstate Access Line Count and Interstate Access Certification, both due on June 30, 2002 to the Universal Service Administrative Company ("USAC") on June 28, 2002 with the belief that both submissions had to be post-marked by June 30, 2002.
8. Immediately following the deadline, I had several conversations with USAC as a reporting error required a line count revision to be filed. This line count revision was filed on July 31, 2002. In these conversations, USAC did not advise me that Highland's submissions were not timely filed or that support would not be provided.
9. Believing that I was acting properly, I followed the same procedure with respect to its subsequent high cost line count data filings, required by section 54.307(c), which were due July 31, 2002 and September 30, 2002. Again, USAC did not notify me that these two filings were not timely filed.

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

Executed on June 22, 2004.

  
\_\_\_\_\_  
Carrie Gumm

Manager of Business Operations  
Highland Cellular, Inc.