Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	)	
	)	
Pine Belt Cellular, Inc. Petition for Waiver	)	
of Section 54.307(c) of the Commission's Rules	)	
	)	

To: Wireline Competition Bureau

PINE BELT CELLULAR, INC.
PETITION FOR WAIVER
EXPEDITED TREATMENT REQUESTED

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TABLE OF CONTENTS

SUMMARY ii

SPECIAL CIRCUMSTANCES JUSTIFY THIS WAIVER REQUEST 2

GRANT OF THIS WAIVER REQUEST IS IN THE PUBLIC INTEREST 8

COMMISSION PRECEDENT SUPPORTS GRANTING THE
REQUESTED WAIVER 11

SUMMARY

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to sections 1.3 and 1.925 of the Commission's rules, petitions the Commission for an expedited waiver of Section 54.307(c) of the Commission's rules with respect to the filing deadlines for the Universal Service Administrative Company's ("USAC's") receipt of Pine Belt's Interstate Access Support ("IAS") and High Cost Model ("HCM") filings. Pine Belt seeks a waiver of the rules so that USAC will accept filings that Pine Belt attempted to make on a timely basis, but were received by USAC within one of two business days after the filing deadline.

Pine Belt is a small family-owned provider of cellular and personal communications services to rural and non-rural areas in five Alabama counties. Pine Belt is dedicated to the rural communities it serves. Grant of this waiver, so that Pine Belt could receive $60,793 in High Cost and IAS revenue currently withheld by USAC, would permit Pine Belt to limit financial and operational hardship to the company and its customers. Grant of this waiver serves the public interest.

Pine Belt is a small business serving a sparsely populated and economically challenged rural area. The unemployment rats for the Pine Belt service areas are 95% and 160% higher than the rate for Alabama generally and for the United States. There are 2.5 citizens in the Pine Belt licensed area living below the poverty line for every such person in the United States (the Alabama ratio is 2:1). Educational levels are lower and earnings per household are lower. Pine Belt's service territory includes precisely the population that needs the help that universal service funds were designed to provide.

In March 2005 Pine Belt filed a Petition for Waiver seeking relief in relation to the filing of an Annual Certification due in October 2004. That filing was missed due to the business

operations disruption and personal hardship that occurred after Hurricane Ivan. Pine Belt made staffing changes to address workload concerns, and an employee new to USAC filing procedures worked with an outside accounting firm to make USAC filings. She erroneously assumed that the filing dates were "mailed" dates rather than "received" dates. All IAS filings were mailed before the required deadlines, but were received a day or two after the deadline, as Exhibit 3 shows.

An HCM filing was received by USAC one day after the deadline due confusion about the deadline by an employee of Pine Belt's outside accounting firm. He prepared both IAS and HCM data for filing on the same USAC Form 525. He incorrectly assumed that both filings were due on March 31, and sent the filing via overnight mail on March 30. However, when he called USAC on March 31 to confirm receipt, he was told that the HCM filing was due on March 30. He promptly sent USAC the filing via both facsimile and e-mail, and no processing delay resulted.

The Commission should grant this waiver request both because it would be equitable to do so and because Commission precedent establishes that waivers have been granted to other similarly situated companies. USAC has received all the required filings from Pine Belt, and is in possession of all other necessary data to make the calculations for payment. Pine Belt respectfully submits that grant of this waiver will not cause undue administrative burden on the USAC or the FCC, and the great benefit to the public interest outweighs any small burdens that might result. Therefore. Pine Belt respectfully requests waiver of application of the deadlines so that Pine Belt may receive the $60, 793 in USF funds currently withheld by USAC.

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In the Matter of Federal-State Joint Board on Universal Service Pine Belt Cellular, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules	))))))	CC Docket No. 96-45

To: Wireline Competition Bureau

PINE BELT CELLULAR, INC.
PETITION FOR WAIVER
EXPEDITED TREATMENT REQUESTED

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to sections 1.3 and 1.925 of the Federal Communication Commission's ("FCC's" or "Commission's") rules,[1] and through its undersigned counsel, hereby petitions the Commission for an expedited waiver of Section 54.307(c) of the Commission's rules with respect to the filing deadlines for the Universal Service Administrative Company's ("USAC's") receipt of Pine Belt's Interstate Access Support ("IAS") and High Cost Model ("HCM") filings.[2] Pine Belt seeks a waiver of the rules so that USAC will accept filings that Pine Belt attempted to make on a timely basis, but were received by USAC within one or two business days after the filing deadline.[3]

Grant of this waiver serves the public interest. Grant of this waiver will allow Pine Belt to limit financial and operational hardship to the company and its customers. If Pine Belt receives withheld USAC funds, it will be able to proceed in a more timely manner with its network expansion plans and continue providing quality service to its customers.

[1] 47 C.F.R. § 1.3, § 1.925. Pursuant to § 1.1105, no filing fee applies to this request.
[2] 47 C.F.R. § 54.307(c).
[3] *See* Exhibit 3.

SPECIAL CIRCUMSTANCES JUSTIFY THIS WAIVER REQUEST

Pine Belt is a small family-owned provider of cellular and personal communications services to rural and non-rural areas in five Alabama counties of Choctaw, Dallas, Marengo, Perry and Wilcox. Pine Belt has been providing wireless service since 1994 and its affiliate Pine Belt Telephone, a small rural local exchange company, has been serving rural Alabama customers since 1950's. The company was started to serve public needs. It was founded by Dr. James Nettles, a country doctor, and the father of Pine Belt's current President John Nettles. When he could not get adequate rural telephone service for both his home and medical practice, Dr. Nettles acquired a telephone switch and set up service to an underserved area of Alabama so that his rural patients could call him when medical emergencies arose. Pine Belt's wireless service also continues to provide its largely rural customer base with communications both for emergency and routine communications needs.

Pine Belt is dedicated to the rural communities it serves, and works with a small hard-working team of regulatory, accounting and technical personnel who allocate their time between multiple tasks for Pine Belt and its affiliated companies. Pine Belt employs 36 personnel to manage, operate and maintain Pine Belt Cellular, Pine Belt Telephone and related operations ("Pine Belt Operations"). The company's combined revenue from all operations for the most recent fiscal year was approximately $7.5 million with an after tax loss of $554,000.[4] It is projected that Pine Belt will forfeit $60,793 in High Cost and IAS Revenue if this waiver is not granted. This amount, although only a very small fraction of relative to Pine Belt's overall revenue, and exponentially smaller with regard to the entire high cost fund, is an item that "goes straight to the bottom line". As such, this forfeiture would result in an increase in the company's

[4] Supported by Exhibit 1, Declaration of John C. Nettles.

after tax loss by nearly 8%. This degradation of the company's operating profile, due to an unfortunate and inadvertent administrative error that led to the form being received by USAC a day or two after the deadline, but in ample time for USAC to process the data on the form, is extremely punitive in nature. Pine Belt management is concerned that failure to receive the funds could ultimately cause the viability of its continuing operations to be called in question, resulting in more uncertainties for not only the company but more importantly for its rural customers. Such a development, without question, is contrary to the public interest.

In the last few years, Pine Belt has spent a large a percentage of its budget on regulatory compliance expenses. Pine Belt employs the services of outside accounting, legal and technical professionals to supplement the efforts of its staff. In calendar year 2005 Pine Belt Operations paid over $300,000 for outside legal and accounting services. These expenses have increased over time due to an increasing number of regulatory filings applicable to Pine Belt's business. Currently there are at least 47 federal and 10 state regulatory filings that Pine Belt Cellular and its affiliates must make throughout each year.

As a small business serving a sparsely populated and economically challenged rural area, Pine Belt seeks to efficiently provide a variety of quality services to its customers. A review of U.S. Census demographic information about Pine Belt's service area is useful in understanding some of the challenges Pine Belt encounters in providing service to its customers. Its service area consists of approximately 4,480 square miles with a total population of about 106,686 people, as of the last U.S. Census.[5] The population per square mile is only 24 as compared to 88 per square mile for the State of Alabama and 80 for the United States. The population in this

[5] Statistics obtained from http://quickfacts.census.gov.

service area falls significantly behind the average population in the United States and the State of Alabama in many socioeconomic measures.

The unemployment rates for the Pine Belt service area are 95% and 160% higher than the rate for Alabama generally and the United States. Median household income lags that of the United States and Alabama by 39% and 28% respectively. The statistics for educational level show that the area's general population has achieved significantly lower level of education as measured in by high school and college completion rates for persons above age 25. There are 2.5 citizens in the Pine Belt Cellular licensed area living below the poverty line for every such person in the United States (the Alabama ratio is 2:1).

	US	Alabama	Pine Belt Area
Population Per Square Mile	80	88	24
Per Capita Income	$ 21,587	$18,189	$13,086
Percent of Population Below Poverty Line	12.40%	16.10%	30.7%
% of 25+ Population with High School Diploma	80.40%	75.30%	67.8%
% of 25+ Population with Bachelors Degree or Above	24.40%	19.00%	12.0%

Thus, with higher unemployment, lower earnings per household, a higher poverty rate, and lower than average educational levels, it becomes apparent that doing business in Pine Belt's service area is more challenging than it is in more prosperous areas of the country. Pine Belt's service territory includes precisely the population that needs the help that universal service funds were designed to provide.

Because Pine Belt is committed to serving this area, it seeks out a variety of sources of funds, including USF, to offer, maintain and improve service. In late 2000, Pine Belt initiated a loan application with the U.S. Department of Agriculture's Rural Development Telecommunications Program to expand coverage in its five county service territory and to implement various regulatory mandates, such as CALEA and local number portability. The

process of obtaining this funding was arduous, and included many in-person meetings, application forms, revisions to projections and presentations. Loan approval was finally obtained in March 2003 and the first funds did not become available until September 2003.

Meanwhile, Pine Belt sought and obtained certification from the FCC in May 2000 as an Eligible Telecommunications Carrier ("ETC") for the portions of its service area designated as "non-rural" in Alabama.[6] Following Pine Belt's ETC certification, Pine Belt filed all necessary paperwork, including its certification order and other USAC reports, to receive universal service support. All the filings in early 2003 and early 2004 were timely filed.

In the past two years Pine Belt has confronted several difficult situations that have affected its operations, funding and regulatory filings, including a major natural disaster, some changes in personnel responsible for the regulatory filings, repeated postal service delay, and some confusion about the filing deadlines by an outside vendor retained to assist Pine Belt's compliance efforts. As a consequence, Pine Belt has not received all the USF funds that it would otherwise be entitled to under the Commission's rules and policies.

Pine Belt filed in March 2005 a Petition for Waiver seeking relief in relation the filing of an Annual Certification due October 1, 2004.[7] For local telephone company operations, that certification is filed by the state commission, while competitive wireless companies make the filing directly with the FCC. As Pine Belt explained in its pending Petition for Waiver, its regulatory compliance chart indicated that the filing had been made, but further investigation determined that the annual certification was not received by USAC. The filing was missed both

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[6] *Federal-State Joint Board on Universal Service, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-1252 (rel. May 24, 2002). Pine Belt also has a pending application for ETC authority for the rural portion of its service area.

[7] *See* Pine Belt Cellular, Inc.'s Petition for Waiver, CC 96-45, filed March 3, 2005. Pine Belt is awaiting decision on this earlier-filed Petition for Waiver.

due to the business operations disruption that resulted from Hurricane Ivan, a major natural disaster that caused disruption in southern Alabama in September 2004, and the personal hardships experienced by the staff member responsible for compiling the information. This staff member, along with the vast majority of everyone else in the Pine Belt service area, suffered prolonged disruption of power and personal property damage at her residence. Her ability to cope with these hardships in the immediate aftermath of the hurricane was hampered by the fact that her husband was assisting in hurricane relief in other parts of the area and also in the process of preparing to deploy to Iraq with the Headquarters and Headquarters Support Company of the 122nd Support Group, Alabama Army National Guard.

Shortly after the Hurricane Ivan disaster and the filing issues, Pine Belt's President, John Nettles took responsible measures to address the situation. Emphasizing that service must continue to the public and FCC filings needed to be timely filed, he re-evaluated staffing assignments, and, addressed workload concerns by assigning another staff employee to be responsible for the USAC filings. She reviewed the chart of the deadlines, and worked with an outside accounting firm to gather the data to make the filings. The employee's duties also included accounts payable and customer service responsibilities. In the mistaken belief that the IAS filings, like taxes, needed only to be postmarked prior to the filing deadline, she mailed filings by certified first class U.S. Postal Service mail several days in advance of the required deadline.[8]

As the attached Exhibit 3, and the attached Declarations of John C. Nettles and Rod Ballard demonstrate, all of Pine Belt's filings were all mailed in advance of all of the deadlines. The certified mail receipts (presumably signed on the day of receipt) were signed by USAC

[8] *See* Exhibit 3 for mailed and received dates.

personnel only one or two business days after the respective deadlines.[9] This mistaken understanding regarding the USAC deadline being a "received" deadline rather than the "mailbox rule" that applies to many other accounting functions, was discovered only when Pine Belt's outside accounting firm began investigating why USAC withheld USF funds from Pine Belt. The accountants were informed that the funding discrepancies were due to filings that were logged in by USAC after the applicable deadlines, and thus FCC action was necessary for USAC to provide necessary USF funds to Pine Belt.

President John C. Nettles, soon after his review of the number and volume of annual compliance filings for Pine Belt, decided to supplement his staff's efforts and request additional assistance from an Alabama accounting firm, Jackson Thornton. The firm began to assist Pine Belt with its regulatory filings in late 2005.

Recently, however, some confusion arose at Jackson Thornton about a filing date for a high cost filing, the HCM, included on USAC's Form 525. The person at the accounting firm responsible for preparing Pine Belt's filings worked with Pine Belt personnel to obtain all necessary data to make both IAS and HCM support filings in March 2006. The accountant prepared Form 525 for filing information for both the HCM and IAS. Although both sets of data appear on the same form, there are different deadlines for filing the information. IAS is due the last business day of the quarter, March 31, and the HCM was due on March 30. The accountant incorrectly assumed that both filings were due on March 31. He mailed the Form 525 by U.S. Postal Service Express Mail on March 30 from Montgomery, Alabama to USAC in New Jersey. The filing arrived in New Jersey on March 31 and the U.S.P.S. made a delivery attempt, but for

[9] *See* Exhibit 3. As the Commission points out in several of its recent waiver decisions, a more sophisticated process for the filer to demonstrate receipt information would be useful, given the harsh penalty that attaches if the filing is not timely received.

some reason the postal carrier was unable to obtain a signature for the filing, so a notice was left.[10] When the accountant called USAC to check on whether the filing was received on March 31, he was told that the filing had not arrived (even though apparently a postal carrier had made a delivery attempt--it is unclear whether no one was there to sign for it, or USAC and the postal service have not worked out the appropriate procedures to sign for overnight and/or certified mail, or some other reason). The accountant who called USAC to inquire about whether the Form 525 had arrived was told to send the information by facsimile, and he promptly complied with this USAC request. USAC later sent an e-mail to Pine Belt requesting an e-mail of the Form 525. Exhibit 3 shows that information was also e-mailed and received on March 31.

Pine Belt's accountant, making his first HCM filing on Pine Belt's behalf, and his first filing for a competitive ETC, did not realize that the HCM filing was due on March 30 until informed by USAC staff on March 31. The information was mailed to, faxed to, and e-mailed to USAC on March 31. USAC has all the information it needs to process the payments, and can do so with minimal impact on its operations or the universal service fund if the Commission grants this waiver request. As Exhibit 2, the Declaration of Rod Ballard demonstrates, Pine Belt would lose $60,793 in IAS and HCM universal service funds if this waiver request is not granted. This amount represents an insignificant impact on the fund, as demonstrated in Exhibit 2.

GRANT OF THIS WAIVER REQUEST IS IN THE PUBLIC INTEREST

Section 1.3 of the Commission's rules specifies that the Commission may grant a waiver of the application of any of its rules for "good cause shown." Section 1.925(b)(3) provides that the Commission may waive a rule when the specific facts make strict compliance with a rule inconsistent with the public interest. The Commission may take into account considerations of

[10] Information provided by Jackson Thornton, supported by Declaration of Rod Ballard, Exhibit 2.

hardship, equity or more effective implementation of overall policy on an individual basis. Courts have affirmed the Commission's power to waive its rules if special circumstances warrant waiver, and grant of the waiver serves the public interest.[11]

Failure to receive USAC funds would impose hardship on Pine Belt and its customers. As noted above, Pine Belt has made valiant efforts to continue service to its region during difficult circumstances, and this devotion to its region and customers, and Pine Belt's good faith attempts to meet the deadlines, certainly constitutes the sort of special circumstances that meet the Commission's standards for waiver.

Pine Belt had planned on the USDA rural telecommunication funds for its network build-out plans. However, given the three year time period it took the USDA to review and grant loan approval, and then the additional time it took Pine Belt to actually obtain the funds, Pine Belt's build-out schedule and ability to meet certain projected operating thresholds (required by USDA to fund the loans) suffered. In June 2005 Pine Belt received notice from USDA that, because it did not achieve certain operating thresholds by December 31, 2004 (during the first year of the loan being funded), that no additional loan funds would be advanced until further notice.[12] That action, in cutting off funds Pine Belt had relied upon, has severely limited capital expansion of Pine Belt's facilities, and as a result, Pine Belt's plans to expand coverage to its territory have been delayed. Pine Belt has attempted to fund some of its plans through other sources, including the expectation of distributions from the USF. Therefore, if it fails to get the USF funds at issue here, such loss will have an extremely negative impact on Pine Belt's plans to expand its coverage and service to its customers.

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[11] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. 1990).

[12] Pine Belt's President recently received notice that, subject to meeting certain conditions in a timely manner, USDA loan funds for network construction will be forthcoming in the future.

Pine Belt respects the deadlines established by the Commission and USAC. As the Commission recognizes through its own inquiry into USF administrative procedures,[13] and the plethora of other waiver requests granted and pending, further clarification of deadlines and procedures may improve the workload of both Commission and carrier staffs.

Pine Belt respectfully submits, in light of the special circumstances, and the hardship and inequity that would result if a waiver is not granted,[14] that good cause exists to grant a waiver of the Commission's rules to permit Pine Belt to receive both the IAS and the HCM support currently withheld by USAC, as detailed in the charts in Exhibit 2.

As noted above, outside accountants, working with Pine Belt personnel, discovered the filing deadline issues with the IAS payments after an internal review of USF payments and compliance, and further consultation with USAC. With respect to the HCM filing, the confusion about the deadline arose because the HCM filing and the IAS filing appear on the same form but are due on different dates. The accountants made the HCM filing within a day of the deadline.[15]

This total amount of funding that Pine Belt has not yet received from USAC represents a loss of approximately $60,793 to Pine Belt, funds that otherwise could be used by Pine Belt to continue to expand its network, and to provide the wireless services in Alabama relied on by its customers both for routine and emergency purposes.

USAC has received all required filings from Pine Belt, and is in possession of all other necessary data to make the calculations for payment. Therefore, Pine Belt respectfully submits that grant of this waiver will not cause undue administrative burden on the USAC or the FCC, and the great benefit to the public interest outweighs any small burdens that might result. Given

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[13] *See Comprehensive Review of Universal Service Fund Management, Administration and Oversight,* WC Dkt. No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).
[14] *See* Declaration of John C. Nettles at Exhibit 1.
[15] *See* Exhibit 3.

the special circumstances presented in this request, waiver of the rules would not undercut the purpose of the rules, and would serve the public interest.

Despite Pine Belt's continuing efforts to assure compliance, some inadvertent mistakes have occurred, including misunderstanding about the deadline rules, a reorganization of personnel responsible for the filings, and postal delay. Pine Belt has reviewed and revised its procedures to assure that it will comply with the required deadlines in the future. It has been sufficiently punished for its inadvertent mistakes, by failing to get the funds in a timely way, and incurring additional auditing and legal expenses to seek the waiver necessary to recoup the funds.

Thus, Pine Belt petitions the Commission to waive the rule in the circumstances described in this Petition, because to do so would be equitable and in the public interest. Grant of a waiver to Pine Belt would benefit its customers, by containing the continuing hardship to company operations, and by improving Pine Belt's timeline to implement its network expansion plans. Pine Belt needs the relief requested in this Petition. Granting such relief would be only a minor administrative inconvenience to USAC, because it already has all the information it needs to make the payments in question.

COMMISSION PRECEDENT SUPPORTS GRANTING THE REQUESTED WAIVER

Good cause exists to grant the requested waiver, and several recent Commission cases offer ample support for a Commission finding that the special circumstances described above warrant a waiver decision. Several carriers recently have received waivers for similar deadline issues involving IAS and high cost filings.

On October 27, 2005, the Commission granted a waiver to Citizens Communications and Frontier Communications, (jointly referred to as "Frontier").[16] Due to an internal reorganization, Frontier failed to make timely IAS line count filings, resulting in a potential $9.6 million loss of IAS funding. The line count report was two business days late. The Commission found that this loss could cause significant hardship to the rural, insular and high cost areas served by Frontier. The Commission noted that the error was unique, brief, promptly cured and did not create a hardship for USAC or other funding recipients.

Another large company, Valor Telecommunications of Texas, received a waiver from the FCC in January 2006 when its IAS filing was inadvertently filed with NECA rather than USAC and the Valor employee was under the impression that the filing would be forwarded by NECA to USAC.[17] When USAC sought recovery of $1.5 million in IAS funding from Valor, Valor argued that such action would constitute an onerous and inequitable penalty on Valor and its customers. The Commission agreed, and exercised its discretion to waive the rule where considerations of hardship, equity, or more effective implementation of overall policy on an individual basis warrant deviation from the rules.

Although Pine Belt does not have the same operational infrastructure or resources as Frontier or Valor, the facts and impact upon the company and its customers are very similar, in that the circumstances involve a reorganization of personnel, a brief delay in filing (one to two days), prompt cure, and hardship to the carrier and its customers. In this case, grant of waiver does not create a hardship for USAC or any other funding recipients. If Pine Belt does not

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[16] *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, CC Docket No. 96-45, DA 05-2829 (Wireline Competition Bureau 2005), ("Frontier Order).

[17] *Valor Telecommunications of Texas, L.P. Request for Review of Decision of Universal Service Administrator; Petition for Waiver and/or Clarification of Filing Deadline in 47 C.F.R. Section 54.802(a)*, CC Docket No. 96-45, Order, DA 06-73 (Wireline Competition Bur. 2006) ("Valor Order").

receive the funds, its customers will suffer similarly. Relative to the size of companies, as measured by assets, revenues and net income, the amount in question here is of much larger significance to Pine Belt than the sums at stake for the larger companies, Valor and Frontier, as demonstrated in the following chart. [18]

	Assets	**Revenue**	**Net Income**	**Amount Subject to Waiver Request**
Valor Communications Group	1,962,781,000	505,894,000	35,347,000	1,500,000
Frontier (Citizens)	6,412,109,000	2,162,476,000	202,375,000	9,600,000
Pine Belt	20,375,147	7,459,525	(554,142)	60,793

Relative Value of Amount Subject to Waiver Request	**Assets**	**Revenue**	**Net Income**
Valor Communications Group	0.076%	0.297%	4.244%
Frontier (Citizens)	0.150%	0.444%	4.744%
Pine Belt	0.298%	0.815%	NMF[19]

Grant of a waiver will preserve and advance universal service policy principles. The Commission found in November 2005 that several smaller eligible telecommunications carriers with mailing and deadline difficulties demonstrated that special circumstances warranted waiver of the rules. In *Benton/Linn Wireless, LLC, et al*, the FCC granted separate requests for waiver filed by eight ETCs.[20] These waivers involved circumstances where carriers, as did Pine Belt, had a good faith belief that they were filing on time, and their filings did not impair administration of the USF. Several of the carriers had the mistaken belief that the requirement to submit data by a specified date meant that the information needed only to be mailed by the deadline rather than received by that date. Three companies were granted waivers in the

[18] *See* http://www.nasdaq.com for Citizens and Valor information. Numbers are as of 12/31/2005. Pine Belt's data is taken from its annual financial statement compiled by Jackson, Thornton & Co as of 6/30/2005.

[19] NMF is an abbreviation for "no meaningful figure." This term is used when comparing financial data among companies where a certain ratio or figure isn't applicable, for example, as in this case when one company, Pine Belt, has negative earnings.

[20] *Benton/Linn Wireless, LLC et al Petition for Waiver of Section 54. 307(c) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 05-3111 (Wireline Competition Bureau 2005) ("Benton/Linn Order").

Benton/Linn case based upon misunderstanding of the Commission's deadline rules. The Commission found that good cause existed to waive its rules to permit receipt of universal service IAS, ICLS and high cost support for the quarters and years in question,[21] and further found that strict enforcement of the rules was not in the public interest.[22]

The *Benton/Linn* decision notes that USAC now is receiving filings by facsimile and e-mail, and suggests that future waiver decisions may be more difficult to decide.[23] Pine Belt notes that it was not aware that any of these options were available for filing until told by USAC staff on March 31, 2006—there do not appear to be any instructions to that effect on the USAC website, the instructions to the forms, or any FCC Public Notices about such procedures. Pine Belt only became aware of the language in the *Benton/Linn* decision after its outside counsel reviewed the decision in preparation for this waiver filing. Pine Belt's small staff would not be likely to use its resources to become aware of the details of a waiver case not involving Pine Belt, absent a compelling need to do so. Pine Belt respectfully submits that the Commission should recognize that more specific notice and instructions would be extremely helpful to companies like Pine Belt.

Pine Belt should not be held to a stricter standard than the cases considered in the Benton/Linn case. Denying Pine Belt's waiver request would cause significant hardship. As the Commission made clear in granting a waiver to FiberNet, a competitive carrier serving West Virginia, "the loss of universal service support could cause significant hardship in the rural, insular, and high-cost areas" and the "loss of funding could undermine FiberNet's investments, in its network, and thus its ability to ensure that customers have and maintain access to adequate

[21] *Id.* at para. 10.
[22] *Id.* at para 12.
[23] *Id.*

services."[24] The Commission articulated a primary policy rationale in granting universal service waivers is 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."[25]

Pine Belt wants to continue to provide quality services to its service area, and grant of this waiver is crucial to the company and its customers. As noted above, Pine Belt serves a very economically challenged area, and the universal service support at issue here is needed to provide quality service to its customers.

Therefore, for all the reasons stated above, Pine Belt respectfully requests that the Commission waive application of the deadline set forth in Section 54. 307(c) of its rules, and consider Pine Belt's IAS and HCM filings, as detailed in the attached exhibits, as timely for purposes of payment of USF support.

Respectfully submitted,

PINE BELT CELLULAR, INC.

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By its Attorney

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[24] *FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4),* Order, CC Docket 96-46, DA 05-3290 (Wireline Competition Bur. 2005) at para. 7.
[25] *Id.*

CERTIFICATE OF SERVICE

I, Phyllis A. Whitten, hereby certify that on this 2nd day of June 2006 copies of the foregoing Petition for Waiver were delivered by e-mail to those marked (*) and by First Class mail to the following:

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EXHIBITS

Exhibit 1

Declaration of John C. Nettles

Exhibit 2

Declaration of Rod Ballard and Associated Financial Impact Statements

Exhibit 3

Chart Showing Mailed and Received Dates of Filings