

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

ORDER

Adopted: October 3, 2012

Released: October 3, 2012

By the Chief, Wireline Competition Bureau:

1. In this order, we grant the request of Border to Border Communications, Inc. (Border to Border) for expedited waiver to correct its study area boundaries that were used in the regression analysis that established “benchmarks” for high-cost loop support (HCLS).¹ In the *HCLS Benchmarks Implementation Order*,² the Bureau adopted the methodology for establishing limits on reimbursable capital costs and operating expenses (capex and opex, respectively) to implement the benchmarking rule that the Commission adopted in the *USF/ICC Transformation Order*.³

2. The benchmarking methodology uses quantile regression analyses to generate a capex limit and an opex limit for each rate-of-return cost company study area. The geographic independent variables used in the regressions were rolled up to the study area using Tele Atlas wire center boundaries, which is a widely-used commercially available comprehensive source for this information.⁴ The Bureau provided a streamlined, expedited waiver process for carriers affected by the benchmarks to correct any errors in their study area boundaries by providing accurate boundary information in a manner and format that Bureau staff can readily evaluate and process to determine whether there are special circumstances (i.e., inaccurate boundaries) supporting a waiver.⁵ To help potential petitioners file information efficiently,

¹ See Letter from Stephen W. Andres, General Manager, Border to Border Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed July 2, 2012) (Border to Border Petition).

² *Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 4235 (Wireline Comp. Bur. 2012) (*HCLS Benchmarks Implementation Order*).

³ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17741-47, paras. 210-26 (2011) (*USF/ICC Transformation Order*); *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

⁴ TomTom Telecommunications Suite 2011.09 (formerly Tele Atlas North America), Wire Center Premium, for wire center boundary and central office location information.

⁵ See *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246-47, paras. 27, 29. Generally, the Commission’s rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

accurately, and in a manner that will permit the Bureau to evaluate and process the information expeditiously, the Bureau set forth a template for filing study area maps.⁶

3. On July 2, 2012, Border to Border provided the Bureau with wire center boundaries consistent with the data specifications for submitting boundary information set forth in Appendix C of the *HCLS Benchmarks Implementation Order*.⁷ As requested, the information submitted included a certification by an officer of the company under penalty of perjury that the information provided accurately portrays Border to Border's study area.⁸

4. Pursuant to section 1.3 of the Commission's rules, we find that special circumstances warrant waiver of the Commission's rules to revise the capex and opex benchmarks for Border to Border that were listed in Appendix B of the *HCLS Benchmarks Implementation Order*.⁹ Using the corrected boundary information, Bureau staff modified the relevant geographic variables and calculated revised capex and opex benchmarks for Border to Border. We direct the National Exchange Carrier Association (NECA) to use the following revised benchmarks in place of the original benchmarks for calculating HCLS for Border to Border from July 1, 2012 through December 31, 2012. Under the revised boundaries, Border to Border's opex and capex benchmarks decreased. Because Border to Border is still limited by the 90th percentile benchmarks for its capex and opex costs during this period, it is not eligible for redistributed HCLS.¹⁰ We also instruct the Universal Service Administrative Company (USAC) to make any necessary support amount adjustments consistent with the corrected wire center boundary information.

Company	90% Capex CPL Estimate	Capex CPL ¹¹	90% Opex CPL Estimate	Opex CPL ¹²	Capped?
Original	\$5,207.15	\$7,813.17	\$6,971.82	\$8,055.02	Yes (Capex & Opex)
Revised	\$5,006.90	\$7,813.17	\$6,743.64	\$8,055.02	Yes (Capex & Opex)

⁶ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4301-02, App. C.

⁷ *Id.* Border to Border Petition at 1-2.

⁸ *See* Border to Border Petition at 3.

⁹ 47 C.F.R. § 1.3; *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4299, App. B. As Border to Border has provided the required documentation, the Bureau has been able to determine that special circumstances (i.e., inaccurate boundaries) support the waiver. *See HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4274, para. 29. The public interest is served by ensuring accurate data is used in necessary computations, regardless of the extent of support reduction or increase. *See id.* at 4274, para. 31.

¹⁰ We note that Border to Border has also submitted a broader petition for waiver of the HCLS benchmarks generally. Petition of Border to Border Communications, Inc., WC Docket No. 10-90 (June 29, 2012). This Order in no way prejudices the resolution of that pending petition for waiver.

¹¹ The capex and opex cost per loop (CPL) amounts are the same as those published in Appendix B of the *HCLS Benchmarks Implementation Order*, which were based on the annual cost data NECA filed in 2011. NECA recently filed a schedule of HCLS for all carriers for the six-month period of July 1, 2012 to December 31, 2012, which reflects voluntary quarterly updates carriers filed pursuant to section 36.612 of the Commission's rules. *See* 47 C.F.R. § 36.612; *Wireline Competition Bureau Announces Access to High-Cost Loop Support Data Submitted by NECA*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 7135 (Wireline Comp. Bur. 2012).

¹² *See supra* note 11.

5. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 254, and 303(r), and of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 254, 303(r), 1302, pursuant to sections 0.91, 0.131, 0.201(d), 0.291, 0.331, 1.3, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.201(d), 0.291, 0.331, 1.3, 1.427, and pursuant to the delegations of authority in paragraphs 210, 217, 226 and 1404 of the *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), that the petition for expedited waiver to correct its study area boundaries filed by Border to Border Communications, Inc. IS GRANTED, as described herein.

6. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau