

**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: November 28, 2012

Released: November 28, 2012

By the Chief, Wireline Competition Bureau:

1. In this Order, we grant the request of Arctic Slope Telephone Association Cooperative, Inc. (ASTAC) for expedited waiver to correct the road miles and road crossings (road information) and the number of exchanges in the study area 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 Wireline Competition Bureau (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 HCLS 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 *HCLS Benchmarks Implementation Order* recognized that there were concerns remain regarding inaccuracies in these data.⁵ In response, the Bureau created a streamlined, expedited waiver process for carriers affected by the benchmarks to correct any errors in their study area boundaries by providing accurate information in a manner and format that Bureau staff can readily evaluate and process to determine whether there are special circumstances supporting a waiver.⁶ Although the relief ASTAC seeks is to correct the road

¹ See Letter from Jeffrey H. Smith, Vice-President and GVNW Consulting General Manager Western Region and Chairman of the Board of Directors, on behalf of Arctic Slope Telephone Association Cooperative, Inc. (ASTAC), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 25, 2012) (*Waiver Request*).

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 *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246, para. 27.

⁶ 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, (continued....)

information and number of exchanges rather than the study area boundaries, the expedited waiver process was created to address concerns regarding data “inaccuracies,”⁷ and we therefore conclude that use of an expedited waiver process is warranted for correction of these data variables.

3. On July 13 and October 12, 2012, ASTAC provided the Bureau detailed road information and the number of exchanges within its study area, including certifications by an officer of the company under penalty of perjury that the filed information is accurate.⁸ ASTAC explained that the data relied upon by the Bureau overstated the number of road miles and crossings in ASTAC’s service area in large part because the data included caribou migration, foot, jeep, tractor, winter trails as well as roads across tundra that are inaccessible by most vehicles.⁹ In addition, ASTAC explained that the data incorrectly included the Barrow exchange in ASTAC’s service area.¹⁰

4. Pursuant to section 1.3 of the Commission’s rules, we find that good cause has been shown and special circumstances warrant waiver of the Commission’s rules to revise the capex and opex benchmarks for ASTAC that were listed in Appendix B of the *HCLS Benchmarks Implementation Order*.¹¹ Using the corrected road and exchange information, the Bureau staff modified the relevant variables and calculated revised capex and opex benchmarks for ASTAC. We direct the National Exchange Carrier Association (NECA) to use the following revised benchmarks in place of the original benchmarks for calculating HCLS for ASTAC from July 1, 2012 through December 31, 2012. Using the revised road and exchange information, ASTAC’s capex and opex benchmarks increased. Because ASTAC remains limited by the 90th percentile benchmarks for its opex costs during this period, it is not eligible for redistributed HCLS. We also instruct the Universal Service Administrative Company (USAC) to make any necessary support amount adjustments consistent with the corrected information.

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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.

⁷ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246, para 27.

⁸ *Waiver Request*, QRA Road Mile and Road Crossings Certification Attachment at 1-3; Letter from Jeffrey H. Smith, on behalf of ASTAC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 1-2 (filed Oct. 12, 2012). We note that the *Waiver Request* also asks for changes for other variables included in the benchmark calculations. *Waiver Request*, Attachment—Ex Parte Filed on July 13 at 1-3. This Order does not prejudge the resolution of these other requests.

⁹ *Waiver Request*, QRA Road Mile and Road Crossings Certification Attachment at 1-3.

¹⁰ *Id.* at 3. Because the Barrow exchange was acquired by ASTAC from GTE, it has been accounted for separately from ASTAC’s other exchanges. *Id.*

¹¹ 47 C.F.R. § 1.3; *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4299, App. B.

ASTAC	90% Capex CPL Estimate	Capex CPL ¹²	90% Opex CPL Estimate	Opex CPL ¹³	Capped?
Original	\$341.29	\$341.29	\$876.50	\$1076.08	Yes (opex)
Revised	\$375.40	\$341.29	\$992.42	\$1076.08	Yes (opex)

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, and 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 road and exchange data filed by Arctic Slope Telephone Association Cooperative, 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

¹² 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).

¹³ See *supra* note 12.