

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: May 9, 2013****Released: May 9, 2013**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant in part and deny in part the requests of Silver Star Telephone Company, Inc. (Silver Star) for expedited waiver to correct the study area boundary and number of exchanges for Silver Star's Idaho study area 472295, and change the density, road miles, and road crossings (density and road information) for Silver Star's Idaho and Wyoming study areas that were used in the regression analysis that established "benchmarks" for high-cost loop support (HCLS).<sup>1</sup>

**II. BACKGROUND**

2. In the *HCLS Benchmarks Implementation Order*,<sup>2</sup> 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*.<sup>3</sup> 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.<sup>4</sup> The *HCLS Benchmarks Implementation Order* recognized that there were concerns

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<sup>1</sup> See Letter from Mary J. Sisak, Counsel for Silver Star, regarding Idaho study area, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Sept. 27, 2012) (*Idaho Waiver Request*); Letter from Mary J. Sisak, Counsel for Silver Star, regarding Wyoming study area, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Sept. 27, 2012) (*Wyoming Waiver Request*); Letter from Mary J. Sisak, Counsel for Silver Star, regarding Idaho study area amendment, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Jan. 2, 2013) (*Idaho Waiver Request Amendment*); Letter from Mary J. Sisak, Counsel for Silver Star, regarding Wyoming study area amendment, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Jan. 2, 2013) (*Wyoming Waiver Request Amendment*).

<sup>2</sup> *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*).

<sup>3</sup> 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).

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

regarding inaccuracies in these data.<sup>5</sup> 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.<sup>6</sup> To help potential petitioners file information efficiently, 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.<sup>7</sup>

### III. DISCUSSION

#### A. Benchmarks Revisions

3. In support of its request to correct the study area boundary and number of exchanges for its Idaho study area, on September 27, 2012 and January 2, 2013, Silver Star provided the Bureau with wire center boundaries,<sup>8</sup> consistent with the data specifications for submitting boundary information set forth in Appendix C of the *HCLS Benchmarks Implementation Order*.<sup>9</sup> The information submitted included a certification by an officer of the company under penalty of perjury that the information provided accurately portrays Silver Star's Idaho study area.<sup>10</sup>

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 Silver Star's Idaho study area that were listed in Appendix B of the *HCLS Benchmarks Implementation Order*<sup>11</sup> and in the 2013 benchmarks Public Notice.<sup>12</sup> Using the corrected boundary information and number of exchanges, the Bureau staff modified the relevant variables and calculated revised capex and opex benchmarks for Silver Star study area 472295. We direct the National Exchange Carrier Association (NECA) to use the revised benchmarks in Table 1 in place of the original benchmarks for calculating HCLS for Silver Star for the period from July 1, 2012 through December 31, 2012, and the benchmarks in Table 2 for the period from January 1, 2013 through March 31, 2013. For the period beginning April 1, 2013, the Commission concluded that "it is appropriate to combine or 'sum' the

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<sup>5</sup> *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246, para. 27.

<sup>6</sup> See *id.* 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. *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4301-02, App. C.

<sup>8</sup> *Idaho Waiver Request*, CD-ROM Exhibit, file name "SilverStar Telephone\_472295.zip"; *Idaho Waiver Request Amendment*, CD-ROM Exhibit, file name "SilverStar Telephone\_472295.zip."

<sup>9</sup> *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4301-02, App. C.

<sup>10</sup> *Idaho Waiver Request*, CD-ROM Exhibit "readme\_472295 Idaho.txt"; *Idaho Waiver Request Amendment*, CD-ROM Exhibit, file name "readme\_472295 Idaho.txt."

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

<sup>12</sup> *Wireline Competition Bureau Releases New High-Cost Loop Support Benchmarks for 2013*, WC Docket Nos. 10-90, 05-337, Public Notice, 28 FCC Rcd 3256 (Wireline Comp. Bur. 2013) (*Mar. 26, 2013 Public Notice*).

existing caps as an interim measure.”<sup>13</sup> Therefore, for the period from April 1, 2013 through December 31, 2013, we direct NECA to use the revised summed benchmarks in Table 3. Using the revised boundary information, Silver Star’s capex and opex benchmarks increased for the first two periods and its summed benchmark increased for the third period. Because Silver Star remains limited by the benchmarks during all three periods, it is not eligible for redistributed HCLS for any of the periods. We also instruct the Universal Service Administrative Company to make any necessary support amount adjustments consistent with the corrected information.

**Table 1 -- July 1, 2012 through December 31, 2012**

<b>Silver Star</b>	<b>90% Capex CPL Estimate</b>	<b>Capex CPL<sup>14</sup></b>	<b>90% Opex CPL Estimate</b>	<b>Opex CPL<sup>15</sup></b>	<b>Capped?</b>
Original	513.01	670.86	608.80	1077.67	Yes
Revised	528.66	670.86	615.42	1077.67	Yes

**Table 2 – January 1, 2013 through March 31, 2013**

<b>Silver Star</b>	<b>90% Capex CPL Estimate</b>	<b>Capex CPL<sup>16</sup></b>	<b>90% Opex CPL Estimate</b>	<b>Opex CPL<sup>17</sup></b>	<b>Capped?</b>
Original	466.38	649.84	621.84	1,050.08	Yes
Revised	480.60	649.84	628.60	1,050.08	Yes

<sup>13</sup> *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Sixth Order on Reconsideration and Memorandum Opinion and Order, 28 FCC Rcd 2572, 2583, para. 29 (2013).

<sup>14</sup> 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 filed a schedule of HCLS for all carriers for the six-month period of July 1, 2012 through 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).

<sup>15</sup> See *supra* n.14.

<sup>16</sup> The capex and opex CPL amounts are the same as those published by the Commission on March 26, 2013. See *Mar. 26, 2013 Public Notice*.

<sup>17</sup> See *supra* n.16.

**Table 3 – April 1, 2013 through December 31, 2013**

<b>Silver Star</b>	<b>90% Capex CPL Estimate</b>	<b>90% Opex CPL Estimate</b>	<b>Summed 90% CPL Estimate</b>	<b>Total Cost per Loop<sup>18</sup></b>	<b>Capped?</b>
Original	466.38	621.84	1,088.22	1,699.92	Yes
Revised	480.60	628.60	1,109.21	1,699.92	Yes

## **B. Road Information**

5. In support of its request that the Bureau change the road information for its Idaho and Wyoming study areas, on September 27, 2012 and January 2, 2013, Silver Star provided the Bureau with road information data based on Tiger Line 2010 Census data.<sup>19</sup> We deny this request and decline to change the road information for the reasons explained below.

6. Silver Star argues that the ESRI Street Map data used in the regression analysis are “grossly inaccurate for Silver Star with respect to road miles and road crossings.”<sup>20</sup> Silver Star claims that Tiger Line 2010 Census data are more accurate than ESRI when compared with county maps and Silver Star’s own internal information.<sup>21</sup> Silver Star also provides an aerial photograph with one example of where Silver Star claims Tiger Line data are more accurate than the ESRI data.<sup>22</sup>

7. We decline to change the basis for the road information used in calculating Silver Star’s caps for 2012 and 2013.<sup>23</sup> Silver Star has not demonstrated that the Tiger Line 2010 data are superior to the ESRI data adopted by the Bureau in the *HCLS Benchmarks Implementation Order*.<sup>24</sup> In its comparisons, Silver Star used ESRI 2010 Street Map version 9.3,<sup>25</sup> whereas the Bureau used the more recent version 10.0. In addition, while the example provided by Silver Star shows that in some cases the ESRI data missed some roads, the Tiger data appear to be overly inclusive, in some cases including driveways and intra-property access routes.<sup>26</sup> Therefore, we deny Silver Star’s request to change its road information source to Tiger Line data.<sup>27</sup>

<sup>18</sup> See *supra* n.16.

<sup>19</sup> *Idaho Waiver Request* at 2; *Idaho Waiver Request Amendment* at 2; *Wyoming Waiver Request* at 2, *Wyoming Waiver Request Amendment* at 2.

<sup>20</sup> *Idaho Waiver Request Amendment* at 2; *Wyoming Waiver Request Amendment* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Idaho Waiver Request Amendment*, Map Exhibit; *Wyoming Waiver Request Amendment*, Map Exhibit. Because ESRI data for Guam and American Samoa was unavailable when the regression inputs were required, Tiger files for those two areas were used. *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4263, para. 86 n.53.

<sup>23</sup> However, we are evaluating data sources for road information that will be used to determine support for all carriers starting in 2014.

<sup>24</sup> *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4263, para. 86 n.53.

<sup>25</sup> *Idaho Waiver Request Amendment*, Map Exhibit; *Wyoming Waiver Request Amendment*, Map Exhibit.

<sup>26</sup> For example, in the vicinity of Victor, Idaho (bound by the coordinates 111° 7' 16.465" W; 43° 36' 7.688" N and 111° 7' 1.747" W; 43° 35' 52.075" N), Tiger data appear to include a driveway and an intra-property access route (continued...)

#### IV. ORDERING CLAUSES

8. 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) 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, sections 0.91, 0.201(d), 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.3, and the delegations of authority in paragraphs 210, 217, 226 and 1404 of the *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), that the petitions for expedited waiver filed by Silver Star Telephone Company, Inc. ARE GRANTED with respect to its Idaho study area to correct its boundary and exchange data to the extent described herein, and ARE DENIED with respect to its Idaho and Wyoming study areas to change the road information.

9. IT IS FURTHER ORDERED, pursuant to the 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

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that, according to maps, do not constitute actual roads or road crossings, whereas the ESRI data do not include these (<http://binged.it/YltZQW>).

<sup>27</sup> Arctic Slope Telephone Association Cooperative, Inc. (Arctic Slope) was granted a waiver to correct its road information in November 2012. *Connect America Fund; High-Cost Universal Service Support*, Order, WC Docket Nos. 10-90, 05-337, 27 FCC Rcd 14867 (Wireline Comp. Bur. 2012). However, Arctic Slope identified and provided evidence that specific roads should be removed from the road miles calculation because these roads constituted caribou migration, foot, jeep, tractor, and winter trails as well as roads across tundra that are inaccessible by most vehicles.