

**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: December 20, 2013

Released: December 20, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we revisit certain aspects of Silver Star Telephone Company, Inc.'s (Silver Star) requests for expedited waiver to correct the road miles and road crossings (road information) for Silver Star's Idaho (472295) and Wyoming (512295) study areas that were used in the regression analysis that established "benchmarks" for high-cost loop support (HCLS), and revise the road information used in the regression analysis.¹ Using improved road information provided by Silver Star increases its benchmarks; therefore, Silver Star may be entitled to additional support, which will be processed in accordance with the instructions given below.

II. BACKGROUND

2. 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 The HCLS benchmarking methodology used 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

¹ See Letter from Mary J. Sisak, Counsel for Silver Star, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Sept. 27, 2012) (regarding Idaho study area) (*Idaho Waiver Request*); Letter from Mary J. Sisak, Counsel for Silver Star, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Sept. 27, 2012) (regarding Wyoming study area) (*Wyoming Waiver Request*); Letter from Mary J. Sisak, Counsel for Silver Star, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Jan. 2, 2013) (regarding Idaho study area amendment) (*Idaho Waiver Request Amendment*); Letter from Mary J. Sisak, Counsel for Silver Star, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Jan. 2, 2013) (regarding Wyoming study area amendment) (*Wyoming Waiver Request Amendment*); Letter from Mary J. Sisak, Counsel for Silver Star, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Oct. 28, 2013).

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. argued Nov. 19, 2013).

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 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 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.⁷

3. On September 27, 2012 and January 2, 2013, Silver Star filed waiver requests asking, among other things, that the Commission replace the ESRI Street Map data used in the regression analysis with road information data based on Tiger Line 2010 Census data for Silver Star's Idaho and Wyoming study areas.⁸ Silver Star argued 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"⁹ and that Tiger Line 2010 Census data are more accurate than ESRI when compared with county maps and Silver Star's own internal information.¹⁰ Silver Star also provided an aerial photograph illustrating one example of where Silver Star asserted Tiger Line data are more accurate than the ESRI data.¹¹ The Bureau denied the portions of Silver Star's waiver requests regarding road information data, finding that Silver Star had not demonstrated that Tiger Line 2010 data are superior to the ESRI data used by the Bureau.¹² In addition, the Bureau noted that Silver Star used ESRI 2010 Street Map version 9.3,¹³ whereas the Bureau used the more recent version 10.0, and that, while the example provided by Silver Star showed that in some cases

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 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.

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

⁸ *See Idaho Waiver Request* at 2; *Idaho Waiver Request Amendment* at 2; *Wyoming Waiver Request* at 2; *Wyoming Waiver Request Amendment* at 2.

⁹ *Idaho Waiver Request Amendment* at 2; *Wyoming Waiver Request Amendment* at 2.

¹⁰ *Id.*; *see Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 28 FCC Rcd 6337, 6340, para. 6 (Wireline Comp. Bur. 2013) (*Silver Star Order*).

¹¹ *See Idaho Waiver Request Amendment*, Map Exhibit; *Wyoming Waiver Request Amendment*, Map Exhibit; *Silver Star Order*, 28 FCC Rcd at 6340, para. 6. 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.

¹² *See Silver Star Order*, 28 FCC Rcd at 6340, para. 7. Although the requests regarding road information were denied, the Bureau granted other portions of Silver Star's waiver requests.

¹³ *See Idaho Waiver Request Amendment*, Map Exhibit; *Wyoming Waiver Request Amendment*, Map Exhibit.

the ESRI data missed some roads, the Tiger data appeared to be overly inclusive, in some cases including driveways and intra-property access routes.¹⁴

4. On June 10, 2013, Silver Star filed an Application for Review asking the Commission to reverse the Bureau's findings regarding ESRI Street Map and Tiger Line data, and use Tiger Line data to compute Silver Star density, road miles, and road crossings in the regression analysis.¹⁵ After several *ex parte* meetings with Bureau staff discussing "how to determine an accurate representation for road miles and road crossing data to be used for purposes of the QRA model," on October 28, 2013, Silver Star submitted additional data to the Commission that calculated actual road miles and road crossings in Silver Star's Idaho and Wyoming study areas, and requested that these data be used to correct all benchmark calculations effective July 1, 2012.¹⁶

III. DISCUSSION

5. In support of its revised request to correct road information, Silver Star provided the Bureau with Silver Star's "own base mapping data reflecting roads, road crossings, subdivisions, cable service areas and routes which was developed using Silver Star data in concert with town, city, county, state, Bureau of Land Management and other publicly available data, and visual inspection by Silver Star."¹⁷ Silver Star explained that it created a map using the ESRI data source utilized by the Bureau.¹⁸ Then, Silver Star created a separate map layer by taking information from its own internal mapping system and town, city, county, state, and Bureau of Land Management maps, as well as visual inspection by Silver Star personnel.¹⁹ All of the roads and road crossings on this layer are geocoded in Silver Star's mapping system.²⁰ As part of its analysis, Silver Star included publicly used and maintained roads, roads plowed and maintained by public authorities, and roads and intersections on which Silver Star has deployed facilities.²¹ Silver Star then removed all driveways and single-party roads.²²

6. To reconcile these different data sources, Silver Star created a combined centerline map using ESRI StreetMap data, the data collected by Silver Star, and county GIS data, where available. Duplicate roads were removed.²³ Where there were discrepancies among the data sources, Silver Star used aerial photo base maps and physical inspection to develop an accurate map.²⁴ Silver Star then used this final map to calculate road miles and road crossings according to the Bureau's Geospatial Data Creation Algorithms for HCLS Regressions.²⁵ The information submitted includes a certification by an

¹⁴ *Silver Star Order*, 28 FCC Rcd at 6340, para. 7.

¹⁵ Silver Star Telephone Company Application for Review, WC Docket Nos. 10-90, 05-337 (filed June 10, 2013).

¹⁶ Letter from Mary J. Sisak, Counsel for Silver Star, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 5 (filed Oct. 28, 2013).

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

officer of the company, under penalty of perjury, that the information provided accurately portrays Silver Star's Idaho and Wyoming study areas.²⁶

7. Pursuant to section 1.3 of the Commission's rules,²⁷ 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 and Wyoming study areas that were listed in Appendix B of the *HCLS Benchmarks Implementation Order*²⁸ and in the 2013 benchmarks Public Notice.²⁹ Consistent with Bureau precedent,³⁰ Silver Star has provided detailed information on the actual location of roads and road crossings within its service areas. The Bureau agrees that the information provided by Silver Star is the most accurate source of road and road crossing data available for Silver Star's study areas. Therefore, using the corrected road data, the Bureau staff modified the relevant variables and calculated revised capex and opex benchmarks for Silver Star's Idaho and Wyoming study areas. We direct the National Exchange Carrier Association (NECA) to use the revised benchmarks in place of the original benchmarks for calculating HCLS for Silver Star's Wyoming and Idaho study areas from July 1, 2012 through December 31, 2012 and from January 1, 2013 through March 31, 2013, as indicated in the Appendix attached to this Order. For the period beginning April 1, 2013, the Commission concluded that "it is appropriate to combine or 'sum' the existing caps as an interim measure."³¹ Therefore, for the period from April 1, 2013 through December 31, 2013,³² we direct NECA to use the revised summed benchmarks, as indicated in the Appendix. We instruct NECA to make these changes within sixty days after this Order is adopted.

8. Using the revised road information for the Idaho study area, Silver Star's capex and opex benchmarks increased for the first two periods, and its summed benchmark increased for the third period. Therefore, Silver Star may be entitled to additional support above what it received with the lower benchmarks in all three periods. Because Silver Star's Idaho study area remains limited by the benchmarks during all three periods, Silver Star is not eligible for redistributed HCLS in any of the three periods. Using the revised road information for the Wyoming Study area, Silver Star's capex and opex benchmarks increased for the first two periods, and its summed benchmark increased for the third period. Silver Star's Wyoming study area becomes eligible for redistribution in the first period because it becomes uncapped by the benchmarks during that period. Due to the higher benchmarks, Silver Star will be entitled to additional support above what it received with the lower benchmarks in the first period. Silver Star's Wyoming study area continues to be uncapped by the benchmarks for the last two periods, so it is eligible for redistributed HCLS for those two periods. We also instruct the Universal

²⁶ *Id.* at 3.

²⁷ 47 C.F.R. § 1.3.

²⁸ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4299, App. B.

²⁹ *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*).

³⁰ *Connect America Fund; High-Cost Universal Service Support*, Order, WC Docket Nos. 10-90, 05-337, 27 FCC Rcd 14867 (Wireline Comp. Bur. 2012) (granting a waiver request in which 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).

³¹ *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).

³² NECA should continue to use the benchmarks calculated for the period from April 1, 2013 through December 31, 2013 until revised benchmarks are made available or the Commission takes other action.

Service Administrative Company to make any necessary support amount adjustments consistent with the corrected information.

IV. ORDERING CLAUSES

9. 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 we are waiving the rules to the extent described herein.

10. 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

APPENDIX

Idaho Study Area 472295 -- July 1, 2012 through December 31, 2012					
Silver Star	90% Capex CPL Estimate	Capex CPL ¹	90% Opex CPL Estimate	Opex CPL ²	Capped?
Original	513.01	670.86	608.80	1077.67	Yes
Revised	573.26	670.86	672.21	1077.67	Yes

Idaho Study Area 472295 – January 1, 2013 through March 31, 2013					
Silver Star	90% Capex CPL Estimate	Capex CPL ³	90% Opex CPL Estimate	Opex CPL ⁴	Capped?
Original	466.38	649.84	621.84	1,050.08	Yes
Revised	500.90	649.84	658.33	1,050.08	Yes

Idaho Study Area 472295 – April 1, 2013 through December 31, 2013					
Silver Star	90% Capex CPL Estimate	90% Opex CPL Estimate	Summed 90% CPL Estimate	Total Cost per Loop ⁵	Capped?
Original	466.38	621.84	1,088.22	1,699.92	Yes
Revised	500.90	658.33	1159.23	1,699.92	Yes

¹ 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).

² See *supra* App. n.1.

³ 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*.

⁴ See *supra* App. n.3.

⁵ See *supra* App. n.3.

Wyoming Study Area 512295 -- July 1, 2012 through December 31, 2012					
Silver Star	90% Capex CPL Estimate	Capex CPL⁶	90% Opex CPL Estimate	Opex CPL⁷	Capped?
Original	625.10	458.25	725.26	780.34	Yes
Revised	671.89	458.25	781.81	780.34	No

Wyoming Study Area 512295 – January 1, 2013 through March 31, 2013					
Silver Star	90% Capex CPL Estimate	Capex CPL⁸	90% Opex CPL Estimate	Opex CPL⁹	Capped?
Original	639.65	522.50	719.54	643.13	No
Revised	687.54	522.50	775.65	643.13	No

Wyoming Study Area 512295 – April 1, 2013 through December 31, 2013					
Silver Star	90% Capex CPL Estimate	90% Opex CPL Estimate	Summed 90% CPL Estimate	Total Cost per Loop¹⁰	Capped?
Original	639.65	719.54	1359.19	1165.63	No
Revised	687.54	775.65	1463.19	1165.63	No

⁶ See *supra* App. n.1.

⁷ See *supra* App. n.1.

⁸ See *supra* App. n.3.

⁹ See *supra* App. n.3.

¹⁰ See *supra* App. n.3.