

**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: June 26, 2012

Released: June 26, 2012

By the Chief, Wireline Competition Bureau:

1. In this order, we grant the requests of West River Cooperative Telephone Company (West River) and Kennebec Telephone Companies (Kennebec) for expedited waiver to correct their 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

¹ See Letter from Dan Caldwell, Consortia Consulting, Inc. to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al., Attach. (Letter from Jerry Reisenauer, West River Cooperative Telephone Company, to Marlene H. Dortch, FCC (dated June 13, 2012)) (dated June 14, 2012) (West River Petition); Letter from Dan Caldwell, Consortia Consulting, Inc. to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al., Attach. (Letter from Rod Bowar, Kennebec Telephone Company, to Marlene H. Dortch, FCC (dated June 13, 2012)) (dated June 14, 2012) (Kennebec Petition).

² *Connect America Fund; High-Cost Universal Service Support*; WC Docket Nos. 10-90, 05-337, Order, DA 12-646 (Wireline Comp. Bur. rel. Apr. 25, 2012) (*HCLS Benchmarks Implementation Order*).

³ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17741-47, paras. 210-26 (2011) (*USF/ICC Transformation Order and FNPRM*); *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.

(i.e., inaccurate boundaries) supporting a waiver.⁵ 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.⁶

3. On June 13, 2012, West River and Kennebec 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 the square mileage of West River's and Kennebec's respective study areas based on the most recent maps filed with the relevant state commissions.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 West River and Kennebec 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 West River and Kennebec. We direct the National Exchange Carrier Association (NECA) to use the following revised benchmarks in place of the original benchmarks for calculating HCLS for West River and Kennebec from July 1, 2012 through December 31, 2012. We note that because West River and Kennebec's HCLS will not be limited by the 90th percentile benchmarks during this period, they also will be eligible for redistributed HCLS.

⁵ See *HCLS Benchmarks Implementation Order*, DA 12-646, at 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.

⁶ *HCLS Benchmarks Implementation Order*, DA 12-646, at App. C.

⁷ *Id.*

⁸ See West River Petition at 2, Kennebec Petition at 2.

⁹ 47 C.F.R. § 1.3; *HCLS Benchmarks Implementation Order*, DA 12-646, at App. B.

Company	90% Capex CPL Estimate	Capex CPL ¹⁰	90% Opex CPL Estimate	Opex CPL ¹¹	Capped?
West River Original	\$1,188	\$1,269	\$1,007	\$587	Yes/Capex
West River Revised	\$1,607	\$1,269	\$1,108	\$587	No
Kennebec Original	\$1,064	\$872	\$1,385	\$1,386	Yes/Opex
Kennebec Revised	\$1,168	\$872	\$1,487	\$1,386	No

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 *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), that the petitions for expedited waiver to correct their study area boundaries filed by West River Cooperative Telephone Company and Kennebec Telephone Companies ARE 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

Sharon E. Gillett
Chief
Wireline Competition Bureau

¹⁰ 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 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, DA 12-991 (rel. June 22, 2012).

¹¹ See *supra* note 10.