

**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: August 25, 2014**

**Released: August 25, 2014**

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, we deny a petition filed by Kennebec Telephone Company, Inc. (Kennebec) for a waiver of application of the Commission's high-cost benchmarks to Kennebec for 2014.<sup>1</sup> We find that Kennebec has failed to establish good cause for a waiver of the benchmarks. Accordingly, we deny Kennebec's petition.

2. *Background.* In the *USF/ICC Transformation Order*, the Commission adopted a benchmarking rule intended to moderate the expenses of certain rate-of-return carriers with very high costs compared to their similarly situated peers, while further encouraging other rate-of-return carriers to advance broadband deployment.<sup>2</sup> This new framework imposed limits on the amount of high-cost loop support (HCLS) provided to carriers whose capital costs and operating expenses were significantly higher than other similarly-situated companies and redistributed support to carriers whose unseparated loop cost was not limited by the benchmark.<sup>3</sup> The Commission delegated to the Wireline Competition Bureau (Bureau) the authority to adopt a methodology for the benchmarking rule.<sup>4</sup>

3. In the April 2012 *HCLS Benchmarks Implementation Order*, the Bureau adopted a specific methodology for establishing benchmarks for capital expenses (capex) and operating expenses (opex) to be used in the formula that determines HCLS.<sup>5</sup> The methodology used quantile regression analyses to generate a capex limit and an opex limit for each rate-of-return cost company study area.<sup>6</sup> The Bureau also announced its intention to initiate a process to collect study area and exchange boundary

<sup>1</sup> Petition of Kennebec Telephone Company, Inc. for a Waiver of the Applications of the FCC's January 15, 2014 Order, WC Docket Nos. 10-90, 05-337 (filed Jan. 28, 2014) (Kennebec Petition).

<sup>2</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 Rcd 17663, 17741-47, paras. 210-226 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. May 23, 2014).

<sup>3</sup> See *id.* at 17744-45, para. 219-20.

<sup>4</sup> See *id.* at 17744, para. 217.

<sup>5</sup> See *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>6</sup> See *id.* at 4244-45, para. 23.

data directly from all rate-of-return carriers.<sup>7</sup> The Bureau later adopted specific procedures and data specifications for submission of study area boundary data by incumbent local exchange carriers (ILECs) and by state commissions that volunteered to submit data for ILECs within their state.<sup>8</sup> The Bureau stated that it would review the study area boundary data submissions and resolve any void or overlap areas.<sup>9</sup> The Commission and the Bureau subsequently reconsidered certain aspects of the benchmarking rule,<sup>10</sup> and on January 15, 2014, the Bureau released the 2014 HCLS benchmarks.<sup>11</sup>

4. *Kennebec Petition for Waiver.* Kennebec seeks a waiver of the Commission's 2014 HCLS benchmarks. Kennebec explains that it was negatively affected by the Tele Atlas wire center data initially used by the Bureau and as a result, was improperly subject to capped support levels in 2012.<sup>12</sup> Kennebec filed an expedited waiver to correct errors in its study area boundaries on June 14, 2012.<sup>13</sup> The Bureau granted Kennebec's 2012 waiver request, and Kennebec received 2012 support consistent with the corrected study area boundaries.<sup>14</sup> Kennebec claims that it incurred \$11,143 in third-party expenses to prepare and file this expedited waiver, which caused it to exceed the imposed benchmark for 2014.<sup>15</sup> Kennebec now requests that the Bureau waive the 2014 benchmarks as applied to the company.<sup>16</sup>

5. *Discussion.* We find that Kennebec has not demonstrated good cause to waive application of the 2014 benchmarks.<sup>17</sup> As an initial matter, we note that Kennebec exceeded the 2014 cap

---

<sup>7</sup> See *id.* at 4246, para. 27.

<sup>8</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 27 FCC Rcd 13528 (Wireline Comp. Bur. 2012) (*Study Area Boundaries Report and Order*). See also *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Order on Reconsideration, 28 FCC Rcd 1489 (Wireline Comp. Bur. 2013).

<sup>9</sup> *Study Area Boundaries Report and Order*, 27 FCC Rcd at 13534-35.

<sup>10</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 (2013) (reconsidering the requirement that the benchmark regression be rerun annually and directing the Bureau to develop a regression methodology that would generate a single total loop cost cap for each study area); *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 28 FCC Rcd 10999 (Wireline Comp. Bur. 2013) (maintaining the process of summing the capex and opex caps to calculate 2014 HCLS support and delaying the phase-in of support reductions for one year).

<sup>11</sup> See *Wireline Competition Bureau Releases High-Cost Loop Support Benchmarks for 2014*, WC Docket Nos. 10-90, 05-337, Public Notice, 29 FCC Rcd 288 (Wireline Comp. Bur. 2014). The Commission subsequently found that the benchmarks were not functioning as originally intended and eliminated this rule. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7097, paras. 131-32 (2014).

<sup>12</sup> Kennebec Petition at 2.

<sup>13</sup> See Letter from Dan Caldwell, Consortia Consulting, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 et al. (filed June 14, 2012) (enclosing Kennebec June 14, 2012 Waiver Petition).

<sup>14</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd. 7147 (Wireline Comp. Bur. 2012).

<sup>15</sup> Kennebec Petition at 4.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> Generally, the Commission's rules may be waived for good cause 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)

(continued...)

by only \$3,732.<sup>18</sup> Kennebec claims that it incurred \$11,143 in third-party expenses to prepare and file its expedited waiver. However, according to documentation provided by Kennebec, this amount includes expenses incurred prior to the April 2012 release of the *HCLS Benchmarks Implementation Order*, as well as expenses incurred by Kennebec to create maps that it otherwise would have needed to create to comply with the Bureau's study area and exchange boundary data collection. Given that Kennebec could not reasonably have incurred costs for preparing its expedited waiver prior to the Bureau adopting a specific methodology for establishing benchmarks, and that Kennebec would have incurred the cost of complying with the Bureau's study area data collection separate and apart from its expedited waiver, we do not find Kennebec's claim that it incurred \$11,143 in third-party expenses to prepare and file its expedited waiver to be good cause to waive the benchmarks. Accordingly, we deny Kennebec's petition for waiver.

6. Accordingly, IT IS ORDERED, pursuant to sections 1-5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, , 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the petition for waiver filed by filed by Kennebec Telephone Company, Inc., IS DENIED as described herein.

7. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief  
Wireline Competition Bureau

(Continued from previous page) \_\_\_\_\_  
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, 125-28 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> See *Wireline Competition Bureau Releases High-Cost Loop Support Benchmarks for 2014*, WC Docket Nos. 10-90, 05-337, Public Notice, 29 FCC Rcd 288 (Wireline Comp. Bur. 2014).