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: July 26, 2013 **Released: July 26, 2013**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) takes several measures to provide greater clarity regarding support amounts that rate-of-return carriers will receive in 2014. First, we maintain in 2014 the Commission's approach for high-cost loop support (HCLS) benchmarking in 2013, summing the capital and operating expense caps. We do this to provide sufficient time, after reconciliation of recently filed study area boundary data, for public input on the development of a single cap, as required by the Commission in the *Sixth Order on Reconsideration*.[1] In conjunction with this action, we also delay the phase-in of support reductions for one year, rather than making them fully effective in 2014. Second, in view of the recently filed study area boundary data for Alaska, we waive the benchmarking rule for rate-of-return study areas in Alaska for 2014, and in so doing, we dismiss without prejudice a petition for waiver filed by Matanuska Telephone Association (MTA).[2] Third, we clarify that Fremont Telephone Co., a former rate-of-return affiliate of a price cap carrier that was acquired in early 2013 by a rate-of-return carrier, will continue to receive frozen Connect America Phase I support for the remainder of 2013, given the administrative difficulty of a mid-year recalculation of the HCLS benchmarks. These measures will provide additional predictability and certainty for rate-of-return carriers as the Bureau works to adjust the benchmarking methodology as directed by the Commission through an open and transparent process.

II. BACKGROUND

2. *USF/ICC Transformation Order and FNPRM.* In the November 2011 *USF/ICC Transformation Order and FNPRM*, the Commission comprehensively reformed universal service funding for high-cost rural areas, and adopted fiscally responsible, accountable, incentive-based policies

[1] *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, 17747, para. 226 (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); *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) (*Sixth Order on Reconsideration*).

[2] Petition for Waiver of Matanuska Telephone Association, WC Docket Nos. 10-90, 05-337 (filed Aug. 28, 2012) (MTA Waiver Petition). We also dismiss as premature a related petition for clarification filed by MTA. *See* Petition for Clarification of Matanuska Telephone Association, WC Docket Nos. 10-90, 05-337 (filed May 9, 2013) (MTA Clarification Petition).

to preserve and advance voice and broadband service while ensuring fairness for consumers who pay into the federal universal service fund (USF).[3] Among these reforms, the Commission reformed HCLS by adopting a benchmarking rule that, for the first time, placed overall limits separately on capital and operating expenses eligible for reimbursement, and redistributed freed-up HCLS to carriers that stay within these limits.[4] The benchmarking rule was designed to reverse the problematic incentives of the former rule by moderating the expenses of rate-of-return carriers with very high costs compared to their similarly-situated peers, while further encouraging other rate-of-return carriers to invest and advance broadband deployment.[5]

3. To implement the benchmarking rule, the Commission concluded that it should use regression analyses to limit reimbursable capital costs and operating expenses for purposes of determining high-cost support for rate-of-return carriers,[6] and it sought comment on a methodology that used quantile regression analyses and publicly available cost, geographic, and demographic data to generate a set of limits for each rate-of-return cost company study area.[7] The Commission delegated to the Bureau the authority to adopt and implement a specific methodology within the parameters set forth by the Commission after receiving public input in response to the proposal.[8] The Commission also directed the Bureau to annually publish updated benchmarks for rate-of-return cost companies.[9]

4. *HCLS Benchmarks Implementation Order.* 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.[10] The methodology uses quantile regression analyses to generate a capex limit and an opex limit for each rate-of-return cost company study area.[11] The capex and opex benchmarks were implemented as of July 1, 2012. To provide carriers additional certainty, the Bureau also decided to use the same regression coefficients in 2013 as in 2012 during the transition period.[12] Also consistent with the Commission's

[3] *See USF/ICC Transformation Order and FNPRM*, 26 FCC at 17670, para. 11.

[4] *See id.* at 17741-42, 17744-45, paras. 210, 219.

[5] *See id.* at 17741-47, paras. 210-26; 47 C.F.R. § 36.621(a)(5).

[6] *See USF/ICC Transformation Order and FNPRM*, 26 FCC at 17743-44, paras. 214, 217.

[7] *See id.* at 18059-62, 18285-94, paras. 1079-88, App. H.

[8] *See id.* at 17743-44, 17747, paras. 214, 217, 226. Specifically, the Commission: required the Bureau to compare companies' costs to those of similarly situated companies; concluded that statistical techniques should be used to determine which companies shall be deemed similarly situated; provided a non-exhaustive list of variables that the Bureau could consider for purposes of this analysis; and granted the Bureau discretion to determine whether other variables would improve the regression analysis. *Id.* at 17744, para. 217. We note that the limitations on the Bureau's delegated authority in section 0.291 of the Commission's rules do not apply to the specific authority delegated to the Bureau in Commission orders. *See* 47 C.F.R. § 0.291; 47 U.S.C. § 155(c).

[9] *See USF/ICC Transformation Order and FNPRM*, 26 FCC at 17744, para. 218.

[10] *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*). The methodology built on the proposal in the *USF/ICC Transformation FNPRM*, but included improvements based on further analysis by the Bureau and in response to the comments from two peer reviewers and interested parties.

[11] The methodology includes, in relevant part, a variable indicating whether a study area is in Alaska, with a coefficient indicating the weight to be given to the Alaska variable. *See HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4244-45, para. 23.

[12] *Id*. at 4251-52, para. 45.

commitment to a phased transition, the Bureau decided to phase in the financial impact of the benchmarks.[13]

5. Given the Commission's expectation that the HCLS benchmarks would be implemented by July 1, 2012, the Bureau decided to utilize a widely-used, commercially available source for wire center boundaries, specifically Tele Atlas (now TomTom) wire center boundaries, when developing the geographic independent variables used in the regressions for each study area.[14] As an interim measure to address concerns that the Tele Atlas boundaries misstate some rate-of-return study areas,[15] the Bureau provided a streamlined, expedited waiver process for individual incumbent local exchange carriers (ILECs) affected by the HCLS benchmarks to correct errors in their boundaries. The Bureau also committed to develop a process to collect study area and exchange boundary data directly from all rate-of-return carriers.[16]

6. *Study Area Boundaries Data Collection.* In a November 2012 order, the Bureau adopted procedures and data specifications for submission of study area boundary data.[17] In March 2013, after receiving emergency pre-approval from the Office of Management and Budget (OMB) for the data collection, the Bureau provided detailed submission instructions and deadlines via public notice.[18] The Bureau established a May 23, 2013 deadline for ILECs to submit and certify their study area boundary data and a June 28, 2013 deadline for submissions by state commissions that volunteered to submit data for ILECs within their state. The Bureau indicated that it would review the study area boundary data submissions and resolve, with filers and state entities, any void or overlap areas.[19] The Bureau also indicated that, although it expected submissions by state commissions to be verified and reconciled at the state level, any remaining reconciliation would need to be performed by Commission staff.[20]

7. *Sixth Order on Reconsideration.* In the February 2013 *Sixth Order on Reconsideration*, the Commission reconsidered some aspects of the benchmarking rule to limit capital and operating expenses for HCLS.[21] Specifically, the Commission directed the Bureau to develop a regression

[13] *Id.* at 4236-37, 4251-52, paras. 5, 43-45.

[14] *See id.* at 4245, para. 24.

[15] *See id.* at 4246, para. 27.

[16] *See id.* ("[T]o correct any remaining inaccuracies in the Tele Atlas data set, we will issue a Public Notice to initiate the process of collecting study area boundaries directly from all rate-of-return carriers"). Subsequently, on June 1, 2012, the Bureau issued a public notice proposing a method for collecting study area and exchange boundary data from all ILECs. *Comment Sought on Data Specifications for Collecting Study Area Boundaries*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 5970 (Wireline Comp. Bur. 2012) (*Study Area Boundaries Public Notice)*.

[17] *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 27 FCC Rcd 13528 (Wireline Comp. Bur. 2012) (*Study Area Boundaries Report and Order*). *See also Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order on Reconsideration, 28 FCC Rcd 1489 (Wireline Comp. Bur. 2013) (*Study Area Boundaries Order on Reconsideration*) (modifying several aspects of the study area boundary data collection process on the Bureau's own motion).

[18] *Wireline Competition Bureau Announces Procedures and Deadlines for Submissions of Study Area Boundaries*, WC Docket Nos. 10-90, 05-337, Public Notice, 28 FCC Rcd 2852 (Wireline Comp. Bur. 2013) (*Study Area Boundaries Procedures Public Notice*).

[19] *Study Area Boundaries Report and Order,* 27 FCC Rcd at 13534-35; *see also Study Area Boundaries Order on Reconsideration*, 28 FCC Rcd at 1491-92, para. 7.

[20] *Study Area Boundaries Procedures Public Notice,* 28 FCC Rcd at 2852-53.

[21] *See Sixth Order on Reconsideration*, 28 FCC Rcd 2572.

methodology that will generate a single total loop cost cap for each study area beginning in 2014.[22] As an interim measure toward a single cost cap, the Commission directed the Bureau to sum capital and operating expense caps generated by its current methodology for purposes of calculating 2013 HCLS support.[23] The Commission also modified the phase-in of the benchmarks for 2013 to provide carriers additional time to adjust to the changes.[24] Finally, the Commission reconsidered the requirement that the benchmark regression be rerun annually to generate new coefficients, and delegated determination of the frequency for running the regression analysis to the Bureau.[25]

8. *MTA Petition.* MTA is a rate-of-return carrier with a service territory of approximately 9,000 square miles in Alaska.[26] MTA filed a petition for waiver on August 28, 2012, seeking a waiver of the Commission's rule limiting reimbursements for capital expenses, specifically focusing on the impact of the Alaska coefficient on its study area cap.[27]

9. *Fremont Transfer of Control.* In January 2013, the Bureau granted a domestic section 214 application to permit the transfer of control of Fremont Telephone Co. (Fremont) from Fairpoint Communications Inc. to Blackfoot Telephone Cooperative Inc. (Blackfoot).[28] Prior to the transaction, Fremont was treated as a rate-of-return affiliate of a price cap company for the purpose of determining eligibility for Connect America Phase I and Phase II support.[29] As a result of the transfer of control, Fremont became an affiliate of Blackfoot, a rate-of-return company, whose eligibility for HCLS is determined under the rules applicable to rate-of-return carriers, including the benchmarking rule. Bureau staff have received informal inquiries regarding the treatment of Fremont in light of this transaction.

III. DISCUSSION

10. *"Freezing" HCLS Benchmarking for 2014.* We take two specific actions in this Order regarding HCLS benchmarking. First, we retain the same regression coefficients used in 2012 and 2013 for 2014. Second, we delay the phase-in of support reductions for one year, rather than making them fully effective in 2014.

11. As previously recognized by the Commission, geographic factors constitute an important part of the benchmarks analysis.[30] The Bureau is actively working to develop a complete set of study area boundary data in an effort to accurately and effectively implement the Commission's universal service

[22] *See id.* at 2581-83, paras. 24-28. The Commission expressly recognized that the Bureau would incorporate into its analysis the revised study area boundary data received through the Bureau's information collection. *See id.* at 2583, para. 28.

[23] *See id*. at 2583-84, para. 29.

[24] *See id*. at 2584, para. 30.

[25] *See id.* at 2576, para. 8.

[26] *See* MTA Waiver Petition at 3.

[27] *Id.* at 1. On May 9, 2013, MTA filed a petition for clarification requesting that the Commission instruct the Bureau to either establish a positive Alaska coefficient, or have the Bureau rerun the regression analysis with no Alaska capital expenses coefficient for carriers negatively affected by the coefficient. *See* MTA Clarification Petition. MTA noted that the Bureau could take these actions as part of the Bureau's effort to develop a regression methodology that will generate a single total loop cost cap for each study area beginning in 2014. *Id.* at 1 n.2.

[28] *Notice of Non-Streamlined Domestic Section 214 Application Granted*, WC Docket No. 12-351, Public Notice, 28 FCC Rcd 213 (Wireline Comp. Bur. 2013).

[29] 47 C.F.R. § 54.312.

[30] *See USF/ICC Transformation Order and FNPRM*, 26 FCC at 17744, para. 217.

reforms. As noted above, state commissions were given a deadline of June 28, 2013, to file study area boundary data, and ILECs were given a deadline of May 23, 2013. Not all parties timely filed their data and Commission staff needs sufficient time to reconcile the data, including reconciliation of overlap and void areas in the ILEC submissions and any further reconciliation of the state submissions. In addition, although we have submissions for most ILECs, several state commissions have advised that they will need additional time to provide complete data.[31]

12. Based on our review of the ILEC submissions received to date, we now conclude that "freezing" the application of the benchmarking rule for 2014 is necessary to provide the Bureau with adequate time to reconcile and incorporate recently received study area boundary data as we develop a single total loop cost cap regression methodology. In the *Sixth Order on Reconsideration,* the Commission directed the Bureau to develop a regression methodology that will generate a single total loop cost cap for each study area, and delegated consideration of the frequency for running the regression analysis to the Bureau.[32] Due to the delays in submissions by both states and ILECs, we do not yet have a complete dataset on which to base further adjustments to the regression analysis contemplated by the *Sixth Order on Reconsideration*. Furthermore, we believe it would be more transparent and productive to seek public input on the development of a single total loop cost cap *after* we have completed the reconciliation of the new study area boundary data, so that we and outside parties may take the new data into account in considering changes to the rule. Freezing the benchmarking rule for 2014 will provide the additional time for this informed public process.[33]

13. We therefore will use the same regression coefficients as we previously used for 2012 and 2013, which will provide carriers with more certainty by enabling them to estimate their 2014 support.[34] Carriers will be able to determine their individual study area caps now, based on the existing coefficients and the cost data for 2012 that they have already submitted to National Exchange Carrier Association (NECA), which will be submitted to the Commission in NECA's annual filing no later than October 1, 2013.[35] We will also continue to sum the capex and opex caps generated by the Bureau's

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[31] *See* Letter from Michael Balch and Suzanne Smith, Iowa Utilities Board, WC Docket No. 10-90 (filed June 18, 2013) (indicating Iowa Utilities Board would be delaying its study area boundary data submission until July 16, 2013); Letter from Nichole Mulcahy, Counsel for Nebraska Public Service Commission, WC Docket Nos. 10-90, 05-337 (filed June 27, 2013) (indicating study area boundary data submission incomplete and intent to file update "in late summer or early fall, 2013"); Letter from John H. Jones, Ohio Public Utilities Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed June 26, 2013).

[32] *See supra* para. 7.

[33] *See* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337, GN Docket Nos. 12-353, 13-5, at 1 (filed July 10, 2013) (noting that "a number of significant steps must still be taken – including incorporation of high-cost data updates and updating and correction of study area boundaries – as part of any meaningful and informed development and testing process with respect to potentially revised [quantile regression analysis] models," and "the need for the Commission and the Bureau to provide reasonable advance guidance to network operators for capital and operational planning for 2014").

[34] Similarly in 2013, we used the same regression coefficients as those calculated for 2012 during the phase-in of the initial benchmarks. *See Sixth Order on Reconsideration*, 28 FCC Rcd at 2577-78, para. 14.

[35] To provide a simple tool for carriers to be able to calculate their 2014 caps now, the Bureau is posting the following spreadsheet (*see* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319802A1.xlsx, published March 26, 2013). To calculate the 2014 cap for a study area, all one needs do is to update four pieces of information for that study area in the spreadsheet, and the study area's cap will be automatically calculated. These pieces of information are the log of the number of loops (LnLoops), the log of the number of commonly-controlled study areas in the state (LnStateSACs), percentage of undepreciated plant (PctUndepPlant), and the log of the number of exchanges in the study area (LnExchanges).

current regression methodology.[36] To provide additional stability for carriers while we revise the regression methodology, however, we will use the greater of a carrier's number of loops for 2012 *or* 2013 to calculate its final summed cap for 2014.[37] Under the current methodology, a carrier's benchmark cap decreases as the number of lines decrease. Therefore, by using the greater of the number of loops in 2012 or 2013, we will ensure that carriers experiencing line loss will have additional stability in support during this transition year, while ensuring that carriers that have made investments to increase the number of loops are not unduly penalized.

14. Additionally, we delay the phase-in of support reductions for one year, rather than making them fully effective in 2014. As such, in 2014, support will continue to be reduced by fifty percent of the difference between the support calculated using the study area's reported cost per loop and the support as limited by the benchmarks in effect for 2014.[38] We also limit the amount of the reduction for 2014 to no more than fifteen percent of the study area's support as otherwise would be calculated based on NECA cost data, absent implementation of the benchmark rule.[39]

15. *Waiver of HCLS Benchmarking Rule for Alaska for 2013 and 2014.* Also at this time, we waive on our own motion application of the benchmarking rule for rate-of-return study areas in Alaska for the remainder of 2013 and for 2014.[40] We have previously recognized concerns with the inaccuracies within the Tele Atlas data set.[41] Indeed, the Bureau created an 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 could readily evaluate and process. A number of carriers have demonstrated special circumstances (*i.e.*, inaccurate boundaries) supporting a waiver. To date, the Bureau has timely acted on every expedited waiver request, including one from an Alaskan carrier.[42]

16. Because most Alaska carriers did not have their support limited by benchmarks in 2012 and 2013, and thus did not seek an expedited waiver to correct their study areas boundaries, we did not have factual information in the record prior to this time indicating the extent of the discrepancy in the

[36] *See supra* para. 7.

[37] For statistical reasons, the variable corresponding to the number of loops in the regression analysis (the *LnLoops* variable) uses the natural logarithm, rather than the simple count, of the number of loops.

[38] *See HCLS Benchmarks Implementation Order,* 27 FCC Rcd at 4236, 4251, paras. 5, 43 (adopting the fifty percent reduction for 2013).

[39] *See Sixth Order on Reconsideration*, 28 FCC Rcd at 2583-84, para. 30 (adopting the fifteen percent limit for 2013).

[40] 47 C.F.R. § 36.621(a)(5). For rate-of-return cost company study areas in Alaska, the study area's HCLS should be calculated and disbursed using the company's actual cost data in National Exchange Carrier Association's (NECA's) loop cost algorithm, without any reduction or limitation based on the sum of study area's capex and opex caps generated by the current regression methodology. All other rules governing eligibility for HCLS, including the HCLS cap, remain in effect and unchanged for these study areas.

[41] *See HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246, para. 27; *Study Area Boundaries Report and Order*, 27 FCC Rcd at 13529, para. 4.

[42] *See, e.g., Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 11075 (Wireline Comp. Bur. 2012) (granting the expedited waiver request of Wauneta Telephone Company); Order, 27 FCC Rcd 7147 (Wireline Comp. Bur. 2012) (granting the expedited waiver requests of West River Cooperative Telephone Company and Kennebec Telephone Companies); Order, 27 FCC Rcd 12106 (Wireline Comp. Bur. 2012) (granting the expedited waiver request of Border to Border Communications, Inc.); Order, 27 FCC Rcd 14867 (Wireline Comp. Bur, 2012) (granting the expedited waiver request of Arctic Slope Telephone Association Cooperative, Inc.); Order, 28 FCC Rcd 6342 (Wireline Comp. Bur. 2013) (granting the expedited waiver request of South Park Telephone Company, Inc.).

Alaska data. Our preliminary review of the newly submitted study area boundaries indicate that the impact of the variances from the Tele Atlas data set are significant in Alaska for two reasons. First, according to data received to date,[43] as much as three quarters of the square miles shown as served in the Tele Atlas data for those Alaska carriers for which we have data may actually be unserved.[44] Although the Bureau is in the process of reviewing and reconciling the data for the entire nation, based on our review to date, we do not anticipate that we will find a similarly large discrepancy for any other state. Second, Alaska is the only state with its own state-specific variable in the benchmarks regression analysis. The geographic discrepancies in Alaska will significantly impact the Alaska variable,[45] which will in turn significantly affect the impact of the regression analysis on Alaska carriers. Therefore, we conclude that the waiver standard is met given the degree of disparity that exists in Alaska.[46]

17. We therefore provide relief to rate-of-return carriers serving Alaska effective immediately by waiving application of the benchmarking rule for the remainder of 2013 and for 2014, while the Bureau develops a revised regression methodology for a single loop cap that incorporates the newly received data. As noted above, during this time, the Bureau will consider Alaska's unique circumstances when refining the benchmarking methodology for the future.[47]

18. *MTA Petitions.* Because we are waiving altogether application of the benchmarking rule for rate-of-return carriers serving Alaska for the remainder of 2013 and 2014, we conclude that MTA's

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[43] We are still in the process of obtaining information from two Alaska carriers that submitted files with technical issues.

[44] According to the TomTom data for the Alaska incumbent carriers for which we have data, their service areas collectively cover 537,000 square miles, while the new study area boundary data received for those carriers indicate that the service areas collectively cover only 117,000 square miles. (For consistency in comparison, both the TomTom and the study area boundary collection figures exclude the study areas for the two carriers whose data is still being resolved.) *See* TomTom Telecommunications Suite 2012.12 (formerly Tele Atlas North America).

[45] The discrepancies for Alaska *as a whole* could significantly impact the Alaska coefficient (or even the significance of the Alaska variable) in the regression analysis. The impact of the Alaska variables (one each for the capex and opex equations) depends on the relationship between the costs of carriers in Alaska and all the independent variables in the analysis (*e.g.,* the carrier's density, number of road miles, etc.). The exclusion of over 400,000 square miles as being outside the footprint of rate-of-return carriers – an area larger than any other state in the country (for example, all of Texas is approximately 270,000 square miles) – changes the independent variables for many Alaska study areas for which we have received data. The most obvious change is the effect on the density variable. Areas outside of the ILEC footprint are far less likely to be populated; thus, a significant decrease in the number of square miles in an Alaskan study area is not likely to be accompanied by a corresponding decrease in the number of housing units, which would lead to much higher densities for those Alaskan study areas. Because the impact of the Alaskan variables (the coefficients) was calculated using the original independent variable data (including the much lower density values for Alaskan study areas), we now have evidence in the record leading us to conclude that the existing coefficients for the Alaska variable are unlikely to accurately reflect the costs of carriers in Alaska. Because the value of the Alaskan coefficients is jointly determined with all the other variables, a large change in the independent variables of Alaskan study areas would require a new regression to accurately capture the costs of carriers that operate in Alaska.

[46] Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. Waiver of a rule is appropriate 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.

[47] This relief is limited to Alaska, given the potential impact of these geographic disparities on the Alaska variable.

petition seeking a waiver of the application of the Alaska coefficient in the benchmarking rule is moot for the remainder of 2013 and 2014.[48] Furthermore, we note that the Bureau will be developing a revised single cap that takes into account recently submitted geographic data – including the impact of that data on the Alaska coefficient – with full public input. Because no decisions have been made regarding the specification of the equation for 2015 and beyond, we conclude that the relief requested by MTA regarding the Alaska coefficient in its May 2013 petition for clarification is premature. We therefore dismiss without prejudice MTA's petitions as they pertain to application of the benchmark rule prospectively.[49]

19. *Fremont Transfer of Control.* Given the administrative difficulty of implementing a mid-year application of HCLS rules, including the HCLS benchmarks, the Bureau clarifies that Fremont will continue to receive frozen Connect America Phase I support for the remainder of 2013. Fremont will begin receiving high-cost support as a rate-of-return carrier (not affiliated with a price cap carrier) on January 1, 2014. In addition, consistent with the approach taken by the Commission in rebasing the HCLS cap when it required rate-of-return affiliates of price cap carriers to receive frozen support,[50] we direct NECA to re-calculate the HCLS cap for 2014 to include the HCLS that NECA attributed to Fremont when it rebased the cap for 2012. Thus, beginning January 1, 2014, the total annual amount of the ILEC portion of the nationwide loop cost expense adjustment (*i.e.*, the cap on HCLS) pursuant to section 36.603(a) shall be adjusted to restore any support previously eliminated due to Fremont's treatment as a rate-of-return affiliate of a price cap carrier in January 2012.[51]

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and paragraph 544 of the *USF/ICC Transformation Order and FNPRM*, FCC 11-161, that this order IS ADOPTED.

21. IT IS FURTHER ORDERED that section 36.621(a)(5) of the Commission's rules, 47 C.F.R. § 36.621(a)(5), is WAIVED for rate-of-return study areas in Alaska as described herein.

22. IT IS FURTHER ORDERED that the petition for waiver of section 36.621(a)(5) of the Commission's rules, 47 C.F.R. § 36.621(a)(5), filed by Matanuska Telephone Association, IS DISMISSED IN PART as described herein.

23. IT IS FURTHER ORDERED that the petition for clarification filed by Matanuska Telephone Association, IS DISMISSED as described herein.

24. IT IS FURTHER ORDERED that Fremont Telephone Co. SHALL RECEIVE high-cost support as described herein.

[48] The Commission delegated to the Bureau the authority to approve or deny all or part of requests for waiver of the impact of universal service reforms. *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17840, 17842, paras. 540, 544.

[49] We note that MTA may refile its waiver petition and incorporate the record received to date at a future time to the extent that its arguments remain relevant once the Bureau adopts a revised single equation.

[50] *Id.* at 17760, para. 259. Consistent with the Commission's action in the *USF/ICC Transformation Order and FNPRM*, we direct NECA to provide to the Bureau all calculations and assumptions used in rebasing the HCLS cap for 2014.

[51] 47 C.F.R. § 36.603(a).

25. 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

Julie A. Veach
Chief, Wireline Competition Bureau