

Before the  
Federal Communications Commission  
Washington, D.C. 20554

01/01/12

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90  
 )  
High-Cost Universal Service Support ) WC Docket No. 05-337

FILED/ACCEPTED

To: The Commission

MAY 25 2012

Federal Communications Commission  
Office of the Secretary

**PETITION FOR STAY  
OF SILVER STAR TELEPHONE COMPANY, INC.**

Silver Star Telephone Company, Inc. (Silver Star),<sup>1</sup> by its attorneys, hereby requests that the Commission stay implementation of the Wireline Competition Bureau's (WCB's) *Regression Order*<sup>2</sup> and the benchmarking methodology and initial benchmarks contained therein, pursuant to section 1.43 of the Commission's Rules, 47 C.F.R. § 1.43. Silver Star requests a stay of the *Regression Order* until the Commission acts on Silver Star's Application for Review of the order, which is being filed simultaneously herewith, and all inaccuracies in the model are corrected.

**I. Applicable Stay Standard**

Based on the four part test used by the Commission to determine whether a stay is warranted, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if the stay is not granted; (3) other interested parties will not be harmed if

<sup>1</sup> Silver Star operates in Wyoming and Idaho in two study areas. For the purposes of this Petition for Stay, the impact of the regression model on Silver Star reflects the impact on both study areas combined.

<sup>2</sup> Connect America Fund, WC Docket No. 10-90, High-Cost Universal Service Support, WC Docket No. 05-337, Order, DA 12-646 (rel. Apr. 25, 2012) (*Regression Order*).

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the stay is granted; and (4) the public interest favors granting a stay.<sup>3</sup> As shown herein, Silver Star has met the four prongs of this test and, therefore, the Commission should grant this request.

## **II. Silver Star is Likely to Prevail on Merits**

As shown in the Application for Review, the WCB's *Regression Order* and the model and inputs used in the model are fatally flawed in many respects. As a result, the *Regression Order* and the model adopted therein, is arbitrary and capricious.

Although the WCB has acknowledged that the TeleAtlas data is inaccurate for many companies and, in some cases, significantly so, the WCB refused to modify the study area boundaries before implementing the regression methodology. Based on its review of the model and inputs used by the WCB, Silver Star has found that the geographic data for Silver Star also is wildly inaccurate such that it paints an entirely false picture of Silver Star, its facilities, its cost structure, and its service territory. For example, the WCB data fails to include two of Silver Star's exchanges and excludes fully 15 percent of Silver Star's service area. In addition, the data used by the WCB shows a large portion of Silver Star's service area as undeveloped, with little or no telecommunications facilities, when it contains over 100 residential and commercial subdivisions that have been entirely built out by Silver Star as required by state commission rules and Silver Star's carrier of last resort obligation. These errors are then compounded through the model formulas and assumptions. For example, the model assumes that buried plant largely follows roadways and further assumes certain facility costs based on road crossings and intersections. By excluding two exchanges, 15 percent of Silver Star's service area and over 100

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<sup>3</sup> *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); see also *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

residential and commercial subdivisions, the road miles, intersections and road crossing assumptions and the related cost assumptions in the model also are entirely wrong.

The WCB's attempt to justify its refusal to correct the inaccurate geographic data used in the model on the basis that it is the only available data and there is Commission precedent for its use fails in this case. According to the WCB, the TeleAtlas data was used in the Commission's hybrid cost proxy model and to create maps showing certain high cost support areas and areas with competitive carriers in response to requests for the U.S. House of Representatives.<sup>4</sup> The maps provided to Congress, however, were of illustrative value and did not result in direct impacts to carriers. Further, the Commission's hybrid cost proxy model is not applied to rural rate-of return carriers, in part because of the Commission's finding that imprecision in the model would have a greater impact on such small carriers.<sup>5</sup> Accordingly, the fact that the Commission has used the TeleAtlas data in these contexts does not justify its use in this case, where it is an important variable in a model that skews the results of the model for Silver Star and, most likely, other carriers, and that will have real, and significant, financial impacts on Silver Star and other small, rural carriers.

The WCB's provision of a streamlined, expedited waiver process for carriers affected by the benchmarks to correct errors in their study area boundaries also does not save the flawed model. The boundary data is an important variable in a model that seeks to compare similarly situated companies. There can be no confidence that the model results are accurate or that similarly situated companies have, in fact, been compared to each other, if the geographic data for all companies is not accurate. It is quite possible that if the correct data was used for all

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<sup>4</sup> *Order* at ¶25 and fn. 73.

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8934, ¶291 (1997).

companies, there could be differences in the companies that exceed the 90th percentile, such that Silver Star would have no need for the WCB's expedited waiver.

The WCB model also lacks transparency, it is not plausible, and it does not reflect reality. When considering the adoption of the hybrid cost proxy model, the Commission established a number of parameters for consideration of a model, including all underlying data should be verifiable and outputs plausible and the model must include the capability to examine and modify the critical assumptions.<sup>6</sup> Further, a model must reflect reality.<sup>7</sup>

Based on Silver Star's analysis of the model, none of these criteria are met. A number of examples of the model's counter-intuitive results are identified as follows. The model assumes that when the cost of burying plant exceeds a certain level, an "efficient" carrier must use aerial plant. Accordingly, the model penalizes carriers, like Silver Star, that bury plant in this circumstance. However, much of Silver Star's facilities are along the scenic byways of the Bridger-Teton and Caribou national forest land and the cities, counties and federal government, by regulation, prohibits Silver Star from placing aerial plant in these areas. These severe regulations, also require Silver Star to bury any existing aerial plant it may have.

Although the model assumes aerial plant should be installed in certain circumstances and acknowledges that aerial plant is more expensive to maintain than buried plant, the model applies a negative factor to operations expense for aerial plant, which reduces the reimbursement for this expense. Applying a negative factor here is contrary to reality.

The model assumes that buried plant largely follows roadways. However, by relying on inaccurate data, which excludes fully 15 percent of Silver Star's service territory, many miles of

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<sup>6</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8913, ¶250 (1997).

<sup>7</sup> *American Iron & Steel Inst. v. EPA*, 115 F.3d 979, 1005 (D.C. Cir. 1997).

buried plant is excluded from the model for Silver Star. Further, because the number of intersections and road crossings also are considered in the model and are based on the number of road miles, this error is compounded in the model results for Silver Star.

The model considers the number of frost-free days experienced by a company as a factor in the cost of installing and maintaining plant. However, the model rewards carriers with more frost-free days by applying a positive factor in this circumstance which punishes carriers, like Silver Star, with more frost days. This does not reflect reality for Silver Star because it must undergo a finite amount of construction in a shorter period of time, often incurring greater costs as a result of overtime and engaging a greater number of construction crews.

The WCB's model also is unpredictable and insufficient, in violation of Section 254 of the Act. The changing nature of the model, coupled with the inaccurate data and methodologies discussed above, makes it difficult to determine with certainty the effects of the caps over time. The inability to predict the outcome of the model is compounded by the fact that outcomes are based on the actions of all carriers.

The WCB's benchmarking methodology also provides insufficient support for Silver Star. Silver Star has calculated that the projected impact of the regression model will result in a loss in universal service support for Silver Star of approximately \$2 million in 2012; \$1.7 million in 2013; \$1.9 million in 2014; and \$1.8 million in 2015.<sup>8</sup> Even with the phase in for 2012 and 2013 adopted by the WCB, the projected loss of support for Silver Star in 2012 is approximately \$360,000 and \$841,000 in 2013. The per customer impact of the "phased in" 2012 regression

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<sup>8</sup> The changing nature of the model makes it difficult to determine with certainty the effects of the caps over time. However, in an effort to assess the potential effect of the caps in future years, Silver Star assumed the coefficients of the quantile regression model do not change.

model impact is over \$55 per customer. The per customer impact of the "phased in" 2013 regression model impact is almost \$130.

Annual impacts at this level threaten the viability of Silver Star. As Silver Star is the only voice and broadband carrier providing service throughout its service territory, these impacts also threaten the ability of Silver Star's customers to continue to obtain not only broadband service, but also basic voice service. Silver Star's ability to repay its RUS loans and to maintain and operate the facilities installed through the BTOP program also is threatened.

For these reasons, Silver Star is likely to prevail on the merits of its simultaneously filed Application for Review before this Commission.

### **III. Silver Star will be Irreparable Harmed Absent a Stay**

Irreparable harm can be demonstrated "when monetary damages are difficult to ascertain or are inadequate"<sup>9</sup> or where economic loss is coupled with the loss of goodwill or customers.<sup>10</sup> Irreparable injury also can include loss of control of reputation, loss of trade, and loss of goodwill.<sup>11</sup> Silver Star will suffer irreparable harm for all of these reasons.

As shown, monetary damages are difficult to ascertain in the later years of the model because of the changing nature of the model, coupled with the inaccurate date and methodologies discussed herein. The inability to predict the outcome of the model is compounded by the fact that outcomes are based on the actions of all carriers.

The known impact of the model in 2012 and 2013 threatens Silver Star's ability to maintain its customer base and repay its loans. As shown, the per customer impact of the

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<sup>9</sup> *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551-552 (4th Cir. Va. 1994), citing *Danielson v. Local 275*, 479 F.2d 1033, 1037 (2d Cir. 1973).

<sup>10</sup> See *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services LLC*, 425 F.3d 964, 970 (11th Cir 2005)

<sup>11</sup> See *Ferrellas Partners, L.P. v. Barrow*, 143 Fed. App. 180, 190 (11th Cir 2005)

"phased in" 2012 regression model impact is over \$55 per customer. The per customer impact of the "phased in" 2013 regression model impact is almost \$130. This would require either a significant increase in rates charged to customers or a drastic reduction in services and maintenance of facilities. In either case, Silver Star would experience a reduction in customers and a loss of reputation and good will. The inability of Silver Star to repay its loans also would result in a loss of reputation and good will.

Finally, the future impact of the model, as projected by Silver Star and shown herein, threatens the very viability of the company. Accordingly, Silver Star has demonstrated that it will be irreparably harmed by the WCB's model.

#### **IV. Interested Parties Are Not Harmed**

No other interested parties will be injured by grant of the requested stay. The HCLS is a capped mechanism and, therefore, a stay of the benchmarks as applied to Silver Star will not require carriers, and ultimately consumers, to make additional universal service contributions. Further, universal service support amounts for other carriers are determined by separate mechanisms and, therefore, there will be no reduction in their universal service support.

#### **V. The Public Interest Favors Grant of the Stay**

Silver Star is a small incumbent local exchange carrier operating in rural areas of Wyoming and Idaho.<sup>12</sup> It serves 6,493 customer lines in approximately 2860 square miles, or approximately 2.3 customers per square mile. Silver Star's service territory is geographically isolated by two mountain ranges, Bridger Teton and Caribou, and US forest service land. Silver Star is the only carrier providing voice service throughout its service territory. Although

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<sup>12</sup> Silver Star operates in Wyoming and Idaho in two study areas. For purposes of this Application for Review, the impact of the regression model on Silver Star reflects the impact on both study areas combined.

wireless service is available, due to the extreme terrain, it is limited and sporadic. In addition, Silver Star provides necessary transport services to and from the service area for all wireless carriers operating in this area, except one. Accordingly, the ability of wireless carriers to continue providing their services will be impacted as a result of the impacts to Silver Star from the model.

Silver Star provides broadband services to 4753 customers, which represents a penetration rate of 73 percent. Of these customers, 4516 have access to broadband speeds of less than 4M/ 1M. Substantial investment will be required to upgrade the broadband speed of these customers.

Silver Star is the only carrier providing voice and broadband service throughout its service territory. Accordingly, as Silver Star's ability to continue to provide high quality service is impacted by the model, customers will not be able to continue to obtain broadband and voice service in the remote, geographically isolated part of Wyoming and Idaho served by Silver Star. Further, Silver Star's ability to upgrade existing broadband service and deploy service to new areas will be hindered by the application of the model. Accordingly, grant of the application is in the public interest.

**VI. Conclusion**

As shown herein, Silver Star has met the four prongs stay standard applied by the Commission. Accordingly, Silver Star requests a stay of the *Regression Order* until the Commission acts on Silver Star's Application for Review of the order, which is being filed simultaneously herewith, and all inaccuracies in the model are corrected.

Respectfully submitted,  
**SILVER STAR TELEPHONE  
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Dated: May 25, 2012

**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

**DECLARATION OF  
ALLEN R. HOOPES**

1. My name is Allen R. Hoopes. I currently serve as Chairman and Chief Executive Officer of Silver Star Telephone Company, Inc. (Silver Star). I am submitting this Declaration on behalf of Silver Star, in support of the information provided concerning the company and the impacts of the regression analysis formulas adopted by the Wireline Competition Bureau and the resulting caps on capital and operating expenses that may be supported through the High-Cost Loop Support (“HCLS”) component of the Federal Universal Service Fund (“USF”).

2. **BRIEF BACKGROUND ON PERSON** I, Allen R. Hoopes, am Chairman and CEO of Silver Star Communications, an ILEC providing broadband and voice service, which serves approximately 6,493 ILEC customers in Wyoming and Idaho. I currently serve as a board member of the Rural Telephone Finance Cooperative. I am past President of the Idaho Telephone Association, a past board member for OPASTCO (Organization for the Promotion and Advancement of Small Telecommunications Companies), and the past Chairman of the OPASTCO Video and Broadband Committee. I received a B.S. in Finance and Marketing from Brigham Young University. I then served as Vice President of Operations and General Manager of Silver Star Communications and Columbine Telephone Company, a Colorado based company, from 1992 to 1997. Prior to serving as Vice President I served as Assistant Manager of Silver Star Communications from 1986 to 1992.

3. I have reviewed the foregoing Petition for Stay of Silver Star Telephone Company, Inc.

I declare under penalty of perjury that the facts and statements concerning Silver Star contained in the foregoing Petition for Stay of Silver Star Telephone Company, Inc. are true and correct to the best of my knowledge, information and belief.

ALLEN R. HOOPES

[Printed Name]

5-24-2012

Date

Allen R. Hoopes

Allen R. Hoopes, Chairman/CEO  
Silver Star Communications

## Certificate of Service

The undersigned hereby certifies that on the 25<sup>th</sup> day of May, 2012, a copy of the forgoing **Petition for Stay of the Silver Star Telephone Company, Inc.** was served via U.S. Mail, postage prepaid, to the following:

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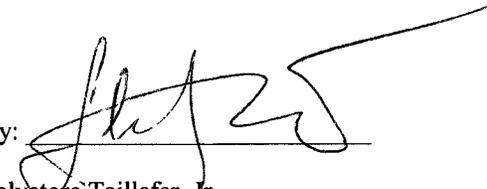
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