

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION**

Rock Hill Telephone Company d/b/a Comporium (“Rock Hill”), Lancaster Telephone Company d/b/a Comporium (“Lancaster”), Fort Mill Telephone Company d/b/a Comporium (“Fort Mill”), PBT Telecom, Inc. d/b/a Comporium (PBT), and Citizens Telephone Company d/b/a Comporium (“Citizens”) (collectively “Comporium”) pursuant to Section 1.429 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) hereby seek reconsideration and/or clarification of certain financial reporting requirements required of privately-held rate-of-return carriers in the *Report and Order*<sup>1</sup> in the above captioned proceeding.

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<sup>1</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carrier; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*Report*

## I. Introduction

In its *Report and Order*, the Commission requires all privately held rate-of-return carriers receiving high-cost and/or Connect America Fund (“CAF”) support to submit a “full and complete annual report of their financial condition and operations as of the end of their preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the Commission, and accompanied by a report of such audit.”<sup>2</sup> The financial report is part of an annual reporting requirement set forth in a new Section 54.313 of the Commission’s rules. Pursuant to the new Section 54.313, the report will be due annually by April 1, with the first report due by April 1, 2012, and must be filed with the FCC, USAC and either the relevant state commission or relevant authority in a U.S. Territory, or Tribal government, as appropriate.<sup>3</sup> The *Report and Order* requires that the financial report “should be made publicly available.”<sup>4</sup>

Rock Hill, Lancaster, Fort Mill, PBT, and Citizens are all privately held rate-of-return carriers that are subject to the new financial reporting requirements. The Comporium companies do not object to providing the Commission, USAC and the relevant state commissions with reports of their financial condition on an annual basis. On the contrary, the companies strongly support the Commission’s goal of ensuring accountability and oversight for recipients of high-cost and CAF support. As further described herein, however, in setting forth this mandate, the *Report and Order* fails to

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*and Order*”). The *Report and Order* was published in the Federal Register on Nov. 29, 2011 at 76 Fed. Reg. 73830-73883.

<sup>2</sup> *Id.* at para. 598. The *Report and Order* further states that the annual financial report shall include “balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements. The income statements shall itemize revenue by its sources.” *Id.*

<sup>3</sup> The Commission delegated authority to the Wireline Competition Bureau to modify the April 1, 2012 deadline “as necessary to comply with the requirements of the Paperwork Reduction Act.” *Id.* at para. 581, n. 961.

<sup>4</sup> *Id.* at para. 602.

take into account practical realities for rate-of-return carriers in providing such reports. These operational facts result in the new requirements imposing unnecessary costs and burdens and establishing a reporting time deadline that will be impossible for many, if not all, carriers to meet. Accordingly, Comporium herein provides fact-specific detail regarding these practical realities for the Commission's consideration. Comporium also offers specific suggestions that will enable the Commission to fulfill its objective without inadvertently imposing unnecessary administrative burden and impractical time-frames.

## **II. The Report and Order Should Clearly State that Carriers are Not Required to Submit Separate Audited Financial Reports for Each Study Area**

The *Report and Order* fails to address situations, such as exist with Comporium, where audited financial reports will cover multiple study areas under common ownership or control that utilize consolidated audit reports. The Commission appears to indicate that rate-of-return carriers will submit audited financial reports by study area when it states, “[b]ecause Part 32 of our rules already requires incumbent carriers to break down accounting by study area, it should provide an accurate picture of how recipients are using the high-cost support they receive in particular study areas.”<sup>5</sup> While it is true that Part 32 requires rate-of-return carriers to break down accounting by study area, this does not necessarily mean that carriers with multiple study areas will have readily available audited financial reports by study area. For example, although Comporium follows Part 32 in its accounting processes, the audited financials for all Comporium rate-of-return carriers are included in a single, consolidated audit report published at the parent company level which includes both regulated and non-regulated affiliated companies.<sup>6</sup>

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<sup>5</sup> *Id.* at para. 599.

<sup>6</sup> Comporium has found that this practice increases efficiencies. A single audit report for all affiliates helps keep accounting expenses manageable.

If the Commission intends for companies with multiple study areas to submit audited financial reports on a study area basis, this would indeed be extremely burdensome for Comporium and other companies with multiple study areas under common ownership or control that utilize consolidated audit reports. For Comporium, this would mean significant cost increases and administrative burdens. Comporium's CPA firm estimates that it would charge an additional \$200,000 to develop separate attested audit reports for each Comporium study area. This would be a significant increase to a corporate operating expense; a key expense that the Commission has determined should be limited "to help ensure that carriers use such support only to offer better service to their customers through prudent facility investment and maintenance, consistent with their obligations under section 254(k)."<sup>7</sup> Further, the consolidated audit Comporium undergoes each year consumes a considerable amount of internal human resources and any additional time spent on separating the audited financial data by study area would create a significant administrative burden.

The underlying data that the Commission seeks and achievement of the necessary scrutiny that underlies the Commission's decision to establish the new reporting requirements can be realized in a more efficient manner without substantially increasing a carrier's operating expenses. For financial reporting compliance in the states where the Comporium companies operate, the relevant state commissions, the North Carolina Utilities Commission and the Public Service Commission of South Carolina, are concerned with ensuring necessary oversight of regulated carriers just as the Commission is concerned. These regulatory authorities, however, do not require that each company

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<sup>7</sup> *Report and Order* at para. 229 citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8930, para. 283 (1997) (subsequent history omitted).

take on the administrative and financial burden of otherwise unneeded costly individual company audits. To satisfy annual reporting compliance, these authorities require only a basic balance sheet, income statement and a few supporting schedules accompanied by an affidavit signed by an officer. No audit report with CPA attestation is required.

Accordingly, Comporium urges the Commission to clarify and/or reconsider its decision and revise its rules by determining that companies with multiple study areas under common ownership or control may submit basic financial schedules (Balance Sheet, Profit and Loss and Supporting Schedules) for regulated operations only, accompanied by an officer affidavit. Such financial reporting is sufficient for two state commissions to ensure an adequate level of oversight and accountability and thus should sufficiently satisfy the FCC's goals of providing more oversight and accountability for recipients of high-cost and CAF support. In the absence of the requested revision to the new reporting requirements, the Commission's new reporting rules operate in a manner that is in conflict with the policy statements made in the *Report and Order* that the financial reporting requirement would not place a significant burden on rate-of-return companies.<sup>8</sup>

### **III. The April 1 Deadline and Disclosure Requirements Are Not Practical Or Achievable and Should be Modified**

As the Commission is fully aware, the first filing deadline for tax returns is April 15 each year and until that time, CPAs and accountants are focused entirely on preparing returns for their clients. However, in the *Report and Order*, the FCC ignores this reality

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<sup>8</sup> See, e.g. *Report and Order* at para. 601. The requirements are also cited in the Final Regulatory Flexibility Analysis in Appendix O, para. 97 in which the Commission is supposed to fulfill its requirement to analyze the impacts that its rules will have on small entities and seek less burdensome alternatives where the regulatory impact is likely to be "significant" or affecting a "substantial number" of these small entities.

and mandates that rate-of-return carriers provide the audited financial reports by April 1. It is Comporium's understanding that even the audited version of the annual financial reports which are submitted by Rural Utilities Service ("RUS") borrowers and can be submitted by these companies to satisfy the financial reporting requirement are not due until the end of April. For Comporium, in further efforts to manage accounting expenses, Comporium's audit process begins after our audit contractor begins their audits and tax returns for publicly traded companies. Comporium pays a lower rate per-hour to our CPA firm, KPMG, in recognition of the delayed start time. This arrangement has been cost-effective, convenient and long-standing for both parties. It has never been an issue because the companies have never had an April 1 filing requirement for any financial schedules or data related to the audit report.

Comporium understands that other carriers have distinct factual circumstances that lead to a similar operational concern with the practicality of meeting the April 1 filing requirements. While each rate-of-return carrier may have differing specific circumstances, it is evident that the April 1 deadline cannot be realistically met. In the case of Comporium, maintaining the April 1 deadline would require Comporium to pay significantly more to its CPA audit firm even if the Commission agreed that the filing requirement could be met by the filing of the consolidated audit report. The financial burden would be magnified even further if the Commission required Comporium to file individual non-consolidated audits for each of its operating companies.

Comporium understands that not all privately held rate-of-return carriers incur the expense of an audit by a CPA firm. To the extent that the Commission has expressed its intent not to impose additional administrative or economic burden as a result of its new

reporting requirement, Comporium urges the Commission to permit carriers to fulfill the requirement in a manner that does not cause additional burdens, and to set a reasonable and practical filing date for all rate-of-return carriers irrespective of the filing option the carrier elects. In addition to the options of submitting an audit conducted by a CPA or submitting the reports a borrower provides to the RUS, Comporium asks the Commission to clarify that in an instance where several rate-of-return carriers are under common control, the carriers may submit a consolidated audit. Preferably, and consistent with the Commission's overall objective and its expressed desire to work with State regulators, Comporium asks the Commission to also provide rate-of-return carriers with the option of submitting the same financial information that they provide annually to their state regulators in those instances where the state regulator requires the submission of financial information to review annually the financial condition and operations of the carrier.

Irrespective of which reporting option a carrier may choose, there are a multitude of practical reasons that delay annual financial accounting, and result in the Internal Revenue Service providing an automatic extension of the April 15 tax filing deadline to October 15. Comporium respectfully recommends that the Commission revise the April 15 deadline for its new reporting requirement and instead set the reporting date as October 15 and apply this date, which conforms with actual financial reporting practices and realities, to all rate-of- return carriers.

Further, the Commission should reconsider its requirement that the financial reports be made publicly available. The financial data of rate-of-return companies contain sensitive proprietary financial information and disclosure of the information could result in competitive harm and thus would qualify for confidential treatment under Section

0.459 of the Commission's rules. The financial report will contain information about revenues and expenses of rate-of-return carriers that may help prospective competitors gain insight into their market strategies, strengths, weaknesses, and areas where a competitor may be able to exercise a competitive advantage. Consequently, in many instances, the disclosure of such information would harm the companies' competitive positions.

#### **IV. Conclusion**

The Comporium companies strongly support the Commission's goal of ensuring accountability and oversight for recipients of high-cost and CAF support. However, the *Report and Order* appears to indicate that rate-of-return carriers must submit audited financial reports by study area to satisfy new financial reporting requirements. For the foregoing reasons, the Commission should either reconsider or clarify its new requirements to allow rate-of-return companies to submit basic financial schedules for regulated operations only, accompanied by an officer affidavit to be filed annually by October 15.

Respectfully submitted,

Comporium

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