

**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 a 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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**FIFTH ORDER ON RECONSIDERATION**

**Adopted: November 13, 2012**

**Released: November 16, 2012**

By the Commission: Commissioner Rosenworcel issuing a statement.

**I. INTRODUCTION**

1. In this Order, we reconsider and clarify certain aspects of the *USF/ICC Transformation Order* in response to various petitions for reconsideration and/or clarification.<sup>1</sup> The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt.<sup>2</sup>

2. As a preliminary matter regarding our review of a number of the specific issues discussed below, we observe that, under Commission rules, if a petition for reconsideration simply repeats arguments that were previously considered and rejected in the proceeding, it will not likely warrant reconsideration.<sup>3</sup>

<sup>1</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 (2011) (*USF/ICC Transformation Order* or *Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>2</sup> See 47 C.F.R. § 1.429.

<sup>3</sup> See *id.*

3. With this standard in mind, we take several limited actions stemming from reconsideration petitions. Specifically, this Order grants in part petitions related to the financial reporting obligations of eligible telecommunications carriers (ETCs) that are privately-held rate-of-return companies. This Order also provides additional guidance and clarifications regarding the standard and process for requests for waiver of our universal service reforms.

## II. FINANCIAL REPORTING REQUIREMENTS FOR PRIVATELY HELD RATE-OF-RETURN CARRIERS

4. In the *USF/ICC Transformation Order*, the Commission required all privately-held rate of return carriers to provide a report on their financial condition and operations and provided two options for doing so: (1) file a copy of the carrier's audited financial statement; or (2) file a copy of the Department of Agriculture's Rural Utility Service (RUS) Form 479, a financial reporting requirement for carriers that borrow money from RUS.<sup>4</sup> The *USF/ICC Transformation Order* requires this information to be filed with the Commission, the Universal Service Administrative Company (USAC), and the relevant state commission, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.<sup>5</sup> Only one party commented generally on the NPRM proposal to require audited financial statements certified by an independent CPA, and no privately held carrier opposed the proposal at that time.

5. The record on reconsideration indicates, however, that a number of rate-of-return carriers do not currently have audited financial statements.<sup>6</sup> Several petitioners argue that the financial reporting requirement is unduly burdensome.<sup>7</sup> For example, 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 . . . for regulated operations only, accompanied by an officer affidavit."<sup>8</sup> Another party requests that we replace the current financial

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<sup>4</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17857, para. 599; see also *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Order, 27 FCC Rcd 605, 609, para. 14 (2012) (*USF/ICC Clarification Order*). The codified rule as adopted, however, did not expressly incorporate the second of these two options. Consistent with our findings in this Order, the rule is now being revised.

<sup>5</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17857, paras. 598; see also 47 C.F.R. § 54.313(f)(2). In the *USF/ICC Clarification Order*, the Wireline Competition Bureau (Bureau) clarified that this reporting requirement does not become effective for state-designated ETCs until Federal Register publication of Paperwork Reduction Act (PRA) approval. See *USF/ICC Clarification Order*, 27 FCC Rcd at 607, para. 4. Affected carriers will be provided with sufficient time to respond after we provide notice of that PRA approval. *Id.* at 608, para.13. We also note that the Commission subsequently modified the deadline for all reporting requirements from April 1 to July 1. *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5625-26, paras. 9-10 (2012).

<sup>6</sup> See Letter from David M. Marlett, Marlett & Assocs., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed Dec. 27, 2011) (Marlett 12/27/11 Ex Parte at 2); Letter from Todd Thorson, Kiesling Assocs., to Carol Matthey, FCC, WC Docket No. 10-90 *et al.*, at 1 (received Dec. 22, 2011) (Kiesling 12/22/11 Ex Parte at 1).

<sup>7</sup> See Rural Associations Petition at 22-24 (arguing that new financial reporting requirements should be reconsidered, and limited in both scope and content); Petition for Clarification and/or Reconsideration of Comporium, WC Docket No. 10-90 *et al.* (filed Dec. 29, 2011) (Comporium Petition) (urging Commission to allow rate-of-return carriers to submit the same financial information they currently provide to state regulators). See also, e.g., Marlett 12/27/11 Ex Parte (urging Commission to require RUS borrowers to file information in format of RUS Form 479 instead of audited financial statements; suggesting April 30 deadline with extensions to June 1st); Kiesling 12/22/11 Ex Parte; Opposition of the Indep. Tel. & Telecomms. Alliance, WC Docket No. 10-90 *et al.*, at 8-10 (filed Feb. 9, 2012) (ITTA Opposition); Comments on Request for Reconsiderations by the National Ass'n of State Util. Consumer Advocates and the NJ Div. of Rate Counsel, WC Docket No. 10-90 *et al.*, at 10 (filed Feb. 9, 2012).

<sup>8</sup> Comporium Petition at 5.

reporting requirement with a requirement that “all privately held rate of return carriers file a form approved by the FCC that is based on the RUS Form 479.”<sup>9</sup> Finally, several petitioners argue that the Commission should allow carriers to file these financial statements confidentially.<sup>10</sup>

6. After reviewing the Petitions for Reconsideration, along with comments filed in the docket, we conclude that some adjustments in the financial reporting rule are appropriate for administrative efficiency and to lessen the potential burden on companies that are not audited in the ordinary course of business. Therefore, we grant in part the reconsideration requests and hereby revise new section 54.313(f)(2) of the Commission’s rules.<sup>11</sup>

7. *RUS Borrowers.* On reconsideration, we require that all privately held rate-of-return carriers that are RUS borrowers to file their RUS Form 479 with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal governments, as appropriate, as part of their annual section 54.313 filing. Requiring these ETCs to submit a copy of an existing RUS Form 479 should impose negligible burden on them, while helping the Commission monitor the impact of its reforms on this group of rate-of-return companies.<sup>12</sup> As one commenter recognizes, one benefit of mandating that RUS borrowers submit information in the RUS Form 479 format is that it will provide the Commission with readily accessible information in a consistent format.<sup>13</sup> The RUS Form 479 is consolidated across all study areas and includes all operations, both regulated and non-regulated, of the borrowing entity. While the RUS Form itself is not audited, the underlying data are audited, and the borrower’s auditor must review the information being reported to RUS.<sup>14</sup> We further require that the ETC must make the underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

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<sup>9</sup> Marlett 12/27/11 Ex Parte at 1.

<sup>10</sup> See Petition for Reconsideration and Clarification of United States Telecom Ass’n, WC Docket No. 10-90 *et al.*, at 29 (filed Dec. 29, 2011) (USTelecom Petition); Compodium Petition at 7-8; Rural Associations Petition at 25; see also Opposition and Comments of the Gila River Community and Gila River Telecommunications, Inc., WC Docket No. 10-90, at 15-16 (filed Feb. 9, 2012) (Gila River Opposition).

<sup>11</sup> See Appendix.

<sup>12</sup> In 2010, high-cost support was distributed to 1,150 rate-of-return study areas (owned by 754 holding companies). *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4610, para. 165; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17754, para. 245. A handful of those 754 holding companies are publicly traded and not subject to this financial reporting requirement. The RUS has outstanding telecommunications loans to more than 450 borrowers, virtually all of whom receive USF support. See Letter from Jonathan Adelstein, Administrator, RUS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at Attach., 9 and 22 (filed July 27, 2012). Thus, we are mandating use of the RUS Form 479 for a significant number – more than half – of carriers subject to section 54.313(f)(2)’s requirements.

<sup>13</sup> Marlett notes, “One benefit of requiring a form in the RUS Form 479 format is that all reports to the FCC would then contain data in a consistent form that can be readily used and accessed by the Commission because the carriers that are currently required to file RUS Form 479 will also be providing that form to the FCC. If GAAP audit reports are filed as is currently contemplated, the Commission will be receiving a hodge podge of information that will take significant time and effort for the Commission staff to filter in order to compile any comparable and consistent data.” Marlett 12/27/11 Ex Parte at 2. See also Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 *et al.*, at 2 (filed Mar. 27, 2012) (NTCA 3/27/12 Ex Parte)(developing a form analogous to RUS form that all carriers subject to this financial reporting requirement could use would “enable the Commission to engage in better apples to apples comparisons of various USF recipients”).

<sup>14</sup> 7 C.F.R. § 1773.33 (requiring auditor to prepare a management letter regarding the audit); see also Letter from Todd Thorson, Kiesling Assocs., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Feb. 2, 2012) (Kiesling 2/2/12 Ex Parte).

8. *Non-RUS Borrowers That Are Audited.* For non-RUS borrowers that are audited in the ordinary course of business, we provide two options. Such carriers may either: (1) file their audited financial statements; or (2) provide their financial information in a form consistent with the RUS Form 479 and accompanied by a management letter from their auditors. For those carriers that already are audited in the ordinary course of business – whether as a condition of a loan from a bank or for other reasons, producing a copy of that audit report to the Commission should impose negligible burden. We agree with those parties that suggest it would be beneficial to the Commission to have all carrier financial reporting information in a consistent format, but also recognize that requiring submission of the information in a form similar to the RUS format would require additional effort for companies that are not RUS borrowers. We therefore provide the option of submitting the information in a format comparable to what is required by RUS for its borrowers, but do not make that mandatory for such filers. We further require that the ETC must make the underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

9. *Carriers That Are Not Audited.* With respect to privately held rate-of-return companies that are not audited in the ordinary course of business, we balance the relative costs and benefits of requiring carriers to comply with a financial reporting requirement that requires submission of an audited financial statement. We conclude on reconsideration that our core objectives can be met, while lessening regulatory burden, by revising new section 54.313(f)(2) to provide two options for privately held rate-of-return carriers that are not audited in the ordinary course of business: (1) file a financial statement that has been subject to review by a CPA or (2) file financial information in a format consistent with the RUS form. In the latter instance, the underlying information must be subject to a CPA review, with that review and related workpapers and financial information to be made available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate. For either of these two options, the filing must be accompanied by an officer certification that: (1) the carrier is not audited in the ordinary course of business; and (2) the reported data are accurate.<sup>15</sup>

10. We conclude that requiring the underlying financial information to be subject to a CPA review, rather than a CPA audit, provides sufficient assurance that we will obtain a reasonable understanding of the affected companies' financial picture. A financial review requires the auditor to make inquiries of management and perform analytical procedures to determine whether the financial statements conform with generally accepted accounting principles.<sup>16</sup> An audit requires the auditor additionally to obtain an understanding of the internal controls environment for the company, which requires the development of certain documentation, such as internal controls procedures, that would not have been prepared but for the audit.<sup>17</sup> Typically an audit will perform more in-depth testing of individual transactions posted to the general ledger. Both an audit and a review require the auditor to determine, however, whether the financial statements prepared by management are consistent with generally accepted accounting principles.

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<sup>15</sup> We reiterate that all certifications made by an officer of the company pursuant to section 54.313 of the Commission's rules are subject to the penalties for false statements imposed under 18 U.S.C. § 1001. *USF/ICC Transformation Order*, 26 FCC Rcd at 17853, para. 581.

<sup>16</sup> American Institute of Certified Public Accountants, *Compilation and Review Standards, Review of Financial Statements*, AR § 90, <http://www.aicpa.org/Research/Standards/CompilationReview/DownloadableDocuments/AR-00090.pdf>.

<sup>17</sup> American Institute of Certified Public Accountants, *Statements on Auditing Standards, Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, AU § 314, <http://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AU-00314.pdf>; *see also* Marlett 12/27/11 Ex Parte at 2; Kiesling 12/22/11 Ex Parte at 1.

11. Because a review does not require the auditor to develop a detailed understanding of the internal controls environment, a CPA review generally is less costly than a full audit.<sup>18</sup> Requiring a CPA review of the underlying information and an officer certification regarding the accuracy of the reported data still provides the accountability of an independent review, while minimizing the economic impact on these generally small carriers associated with an audit. In contrast, we are not persuaded by Comporium's proposal to allow privately-held rate-of-return carriers to provide the Commission with a financial report that has not been subject to any form of independent scrutiny by a CPA.<sup>19</sup> We recognize that some state commissions allow carriers to file self-prepared financial reports only accompanied by an officer certification. Given our responsibility as stewards of the USF, however, we conclude that requiring a CPA review – which requires the CPA to determine whether any material modifications are required in order for the financial statements to be in conformity with generally accepted accounting principles – is necessary to fulfill our core objective of ensuring financial accountability by USF recipients. Based on the record on reconsideration, we therefore conclude that a review will be sufficient to meet our objectives of providing the Commission with an accurate picture of the financial condition of these privately held rate-of-return carriers, without imposing undue burdens on carriers whose financial statements are not already audited.<sup>20</sup>

12. *Fiscal Year 2011 Financial Statements.*<sup>21</sup> Once PRA approval is received for section 54.313(f)(2) as adopted in this Order, we require any privately held rate-of-return carrier to file with the Commission, USAC, the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, pursuant to this rule within a reasonable time,<sup>22</sup> as follows:

- If a carrier receives RUS loans, that carrier must file its 2011 RUS Form 479.
- If a carrier does not receive RUS loans, but its financial statements for 2011 have been audited, that carrier must file a copy of the audited 2011 financial statement, or a financial report in a format comparable to RUS Form 479 accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit, with the Commission, USAC, the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- If a carrier does not receive RUS loans, but its financial statements for 2011 have been subject to review by an independent certified public accountant, that carrier must file a copy of their reviewed 2011 financial statement, or a financial report in a format comparable to RUS Form 479 with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification the carrier was not audited in the ordinary course of business for the preceding fiscal year and that the reported data are accurate.

<sup>18</sup> NTCA claims that the cost to implement an audit requirement could range from \$20,000 to \$75,000 and instead urges that the required filing could be “prepared and provided on the basis of a compilation or review overseen by an accounting firm in lieu of compelling a costly and burdensome certified audit report.” NTCA 3/27/12 Ex Parte at 2.

<sup>19</sup> See Comporium Petition at 4-5 (noting that North Carolina Utility Commission and South Carolina Public Service Commission require submission of income statement and balance sheets with an officer certification, but do not require an audited financial statement). Illinois currently requires carriers to file an annual report with an officer certification. Marlett 12/27/11 Ex Parte at 2.

<sup>20</sup> NTCA 3/27/12 Ex Parte at 2 (arguing a compilation or review reported on something analogous to RUS Form 479 would provide the Commission with reasonable visibility into the financial operations of USF recipients at only a fraction of the cost to those recipients).

<sup>21</sup> We note that in most but not all cases, fiscal year 2011 will be calendar year 2011.

<sup>22</sup> We delegate authority to the Wireline Competition Bureau to publish a filing deadline, providing affected ETCs sufficient time after PRA approval is obtained to file the required information.

13. We find that there is not a significant additional burden for ETCs to file such information because these financial statements already exist. We determine that receiving some 2011 financial statements will assist the Commission and states with verifying whether these carriers are efficiently and appropriately using high-cost support for its intended purposes. Finally, we expect *all* privately held rate-of-return carriers to file on July 1, 2013, pursuant to this rule and subject to PRA approval, Fiscal Year 2012 financial statements.<sup>23</sup>

14. *Submission of Consolidated Information.* We clarify that privately held rate-of-return carriers are not required to submit the financial information on a study area basis. As pointed out in the record on reconsideration, audits of RUS borrowers are not done on a study area basis,<sup>24</sup> and the RUS Form 479 is submitted by the borrowing entity, which could encompass multiple study areas. Several petitioners note that many companies with multiple study areas under common ownership or control prepare a consolidated audit report, which minimizes audit expenses.<sup>25</sup> The Commission has already concluded that holding company level information for RUS borrowers is acceptable, when it concluded that such borrowers could submit the RUS Form 479 to meet the financial reporting requirement. Nothing in the codified rule requires that financial reporting be done on a study area basis. In fact, imposing a requirement that privately held rate-of-return carriers must be audited on a study-area basis would have an unreasonably disparate impact on the respective burdens associated with this reporting requirement for those privately held carriers that are non-RUS borrowers compared to RUS borrowers.<sup>26</sup> We clarify that the language in paragraph 599 of the Order that directs non-RUS borrowers to submit “financial information as kept in accordance with Part 32” was not intended to require financial reporting by study area, but rather was focusing on the fact that companies are already required to maintain financial information by study area pursuant to existing Commission requirements. In response to the petitions for reconsideration and/or clarification, we clarify that that the Commission did not intend to require financial information broken out by study areas for non-RUS borrowers, and such companies under common ownership or control may file financial reports on a consolidated basis.

15. *Requirement That Financial Disclosures Be Publicly Available.* In the *USF/ICC Transformation Order*, we stated that the financial reporting information required to be filed by ETCS would be made publicly available.<sup>27</sup> Some petitioners encourage the Commission to revisit that requirement.<sup>28</sup> Upon reconsideration, we conclude that in some instances there could be a potential for competitors to use the submitted financial data of private rural rate-of-return carriers in an anti-competitive manner, and therefore, as several commenters suggested,<sup>29</sup> we will allow privately held ETCs

<sup>23</sup> We delegate authority to the Wireline Competition Bureau to modify the filing deadline as necessary to comply with the requirements of the Paperwork Reduction Act. In the *USF/ICC Transformation Order*, the Commission delegated to the Bureau the authority to set the format for these reports. *USF/ICC Transformation Order*, 26 FCC Rcd at 17857, para. 600.

<sup>24</sup> See, e.g., Letter from Todd Thorson, Kiesling Assocs., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 16, 2011). Certain non-RUS borrowers are also audited. But the audit reports for these companies often are done on a consolidated basis that may cover multiple study areas. See, e.g., Comporium Petition at 3.

<sup>25</sup> Comporium Petition at 3 & n.6; Marlett 12/27/11 Ex Parte at 2.

<sup>26</sup> For example, Comporium noted in its reconsideration petition that its accounting firm “estimate[d] that it would charge an additional \$200,000 to develop separate attested audit reports for each Comporium study area,” thus significantly increasing Comporium’s corporate operating expenses. Comporium Petition at 4.

<sup>27</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17857-58, para. 602. We note that the only comment we received on this issue in response to the NPRM supported public disclosure. Comments by the National Ass’n of State Util. Consumer Advocates, WC Docket No. 10-90 et al., at 86 (filed Apr. 14, 2011).

<sup>28</sup> See Comporium Petition at 7-8; Rural Associations Petition at 25; Gila River Opposition at 15-16.

<sup>29</sup> See Petition for Reconsideration and Clarification of the National Exchange Carrier Ass’n., Inc.; Organization for the Promotion and Advancement of Small Telecomms. Cos.; and Western Telecomms. Alliance, WC Docket No. 10-90 et al., at 25 (filed Dec. 29, 2011) (Rural Associations’ Petition) (“[T]he Commission should treat any reports

(continued...)

to file the financial data pursuant to section 54.313(f)(2) of the Commission's rules subject to a Protective Order.<sup>30</sup>

16. As we stated in the *USF/ICC Transformation Order*, recipients of high-cost and/or Connect America support receive extensive public funding, and therefore the public has a legitimate interest in being able to verify the efficient use of those funds. Moreover, as we stated, by making this financial information public, the Commission will be assisted in its oversight duties by public interest watchdogs, consumer advocates, and others who seek to ensure that recipients of support receive funding that is sufficient, but not excessive.<sup>31</sup> On the other hand, we agree that, for example, small ETCs serving only one study area could face competitive harm if their financial data are made available to an overlapping or neighboring competitor.<sup>32</sup> Where an ETC serving a large geographic area across multiple states files a consolidated financial statement, it is not possible to determine the revenues and, thus, profits associated with a particular study area. However, where a small ETC serves only one study area, all reported revenues and profits are attributable to that one study area, thus making it easier for competitors to craft business plans that capitalize on their knowledge of the small ETC's reported finances.<sup>33</sup>

17. We conclude that the public interest would best be served by making the private financial data being requested from privately-held rate of return carriers available only subject to the provisions of the Protective Order, and we delegate authority to the Wireline Competition Bureau to adopt such an order consistent with this decision. In particular, as specified in more detail in the Protective Order, we restrict availability of this material as follows: (1) in the case of commercial entities having a competitive or business relationship with the company whose confidential information it seeks, to In-House Counsel not involved in competitive decision-making, and to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in this and related proceedings, and employees of such Outside Counsel and Outside Consultants; (2) to employees and representatives of commercial entities having no competitive or business relationship with the company whose confidential information it seeks; and (3) to employees and representatives of non-commercial entities having no competitive or business relationship with the company whose confidential information it seeks.<sup>34</sup> In sum, we recognize the need to balance the public's legitimate interest in being able to verify the efficient use of universal service high-cost support with the potential competitive harm of such financial data being publicly

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submitted by carriers pursuant to section 54.313 as confidential and proprietary ..." or, in the alternative, that "the Commission should make clear" that carriers might obtain Protective Orders.); USTelecom Petition at 29; Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, WC Docket No 10-90, *et al.* (filed April 2, 2012) (arguing that that carriers should be allowed "to submit financial data under seal pursuant to the established Protective Order process"); *see also* Gila River Opposition at 15-16 (arguing that tribes and tribally-owned entities never publicly disclose such information because it is relevant to the internal affairs of the tribe).

<sup>30</sup> *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Protective Order, DA 12-1857 (Wireline Comp. Bur. rel. November 16, 2012) (Protective Order).

<sup>31</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17857-58, ¶ 602.

<sup>32</sup> *See* Comporium Petition at 7-8.

<sup>33</sup> In other contexts, the Commission has allowed revenue information reported in the FCC Form 499 to be withheld from Freedom of Information Act requests, recognizing that when combined with other, publicly available information, release of such information would enable competitors to estimate a carrier's revenues for specific product families, particular customers and geographic areas and to identify demand for individual services to the carrier's detriment. *See* In the Matter of the Lakin Law Firm, 19 FCC Rcd 12727 (2004); In the Matter of John E. Wall, Jr., 22 FCC Rcd 2561 (2007). The Commission also has found that "[c]ompetitive harm under [FOIA Exemption 4] includes the harm caused by release of detailed financial information such as a company's assets, liabilities, and investments." In the Matter of Johan Karlsen, 24 FCC Rcd 12299 (2009) (affirming Enforcement Bureau's decision to withhold detailed financial information, such as revenue data in financial statements and tax returns obtained in investigation of possible unauthorized transfer of control).

<sup>34</sup> *See* Protective Order, DA 12-1857.

available. We conclude that adopting such procedures in a Protective Order will give appropriate access to the interested members of the public while protecting especially competitively sensitive information from improper disclosure, and that disclosure pursuant to the Protective Order thereby serves the public interest.

### III. WAIVER STANDARD FOR USF REFORMS

18. The National Exchange Carrier Association, Inc., the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (Rural Associations) seek reconsideration of the USF waiver standard articulated in the *USF/ICC Transformation Order* and ask that the Commission “discard the various hurdles specified in the Order and instead simply apply the ‘good cause’ standard applicable to waiver requests generally under section 1.3 of the rules.”<sup>35</sup> The Rural Associations request that a carrier continue to receive support pursuant to the prior, no-longer-in-effect rules while the carrier’s petition for waiver of any new rule is pending.<sup>36</sup> They also argue that the Commission should make the waiver process “less burdensome” and “more equitable and attainable” for small companies.<sup>37</sup> In particular, the Rural Associations ask that the Commission: (i) waive the filing fee applicable to USF-related waivers; (ii) exclude costs incurred in preparing a waiver request from corporate operations expenses counted toward the caps; (iii) permit carriers to submit information from intrastate earnings reviews and rate cases or Universal Service Administrative Company (USAC) audits in lieu of the financial information the Commission identified in the *USF/ICC Transformation Order*; (iv) require carriers to only submit information that relates to the use of supported plant; (v) not require carriers to provide geographic data or data about end user rate plans to the extent the Commission already has such information in its possession; (vi) clarify that standard protective order procedures are available for waiver requests; (vii) clarify that carriers are not required to provide additional information about unused or spare capacity as long as they comply with Parts 32 and 36 of the Commission’s rules; and (viii) not require carriers to provide additional information about corporate operations expenses except in cases where a carrier seeks a waiver specifically of the corporate operations expense cap.<sup>38</sup>

19. We note that the Commission’s intent in discussing waivers relating to reductions in USF support was not to replace the ordinary standard for granting waivers under section 1.3 of the Commission’s rules, but rather to provide guidance in advance to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver under that waiver standard to assist potential applicants in effectively formulating their waiver petitions.<sup>39</sup> While we decline to “discard” this guidance, we modify it in several respects, and clarify it in others, based on specific concerns raised by petitioners.

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<sup>35</sup> Rural Associations’ Petition at 22-24.

<sup>36</sup> *Id.* at 2-3.

<sup>37</sup> *Id.*

<sup>38</sup> See Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2-3 (filed June 25, 2012) (NTCA 6/25/12 Ex Parte).

<sup>39</sup> Indeed, the Commission specifically cited section 1.3 in footnote 905 of the *Order*. 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.

20. In the *USF/ICC Transformation Order*, the Commission stated that “[w]e envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.”<sup>40</sup> This language in the Order reflected the Commission’s longstanding historical commitment to ensuring ubiquitous voice availability and a recognition that the supported service today remains voice telephony. At the same time, we recognize that for the first time, the Commission has now established as explicit goals the preservation and advancement of voice service and ensuring universal availability of voice and broadband, both fixed and mobile, at reasonably comparable rates to reasonably comparable services available in urban areas, while minimizing universal service contribution burdens on consumers and businesses. Accordingly, we now clarify that the Commission will consider the impact of reforms not only on voice service alone, but also on continued operation of a broadband-capable network and the effect on consumer rates.

21. Specifically, we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband.<sup>41</sup> To the extent carriers have already made the investment in such broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those existing networks offering service at reasonably comparable rates in areas where consumers have no alternatives would be a public policy concern. A waiver petition claiming that support reductions are substantial, by itself, would be insufficient. The petition must also establish that consumers will suffer loss of services with no alternative *or* that consumers in the relevant study area would *not* be paying reasonably comparable rates to urban consumers. We emphasize that support reductions do not necessarily translate into equivalent rate increases for consumers. Rather, we expect that carriers would look for ways to reduce costs and increase revenues – in addition to ensuring that consumer rates are reasonably comparable – in considering whether to pursue a petition for waiver.

22. In determining whether to provide full or partial relief to a waiver applicant, we also are mindful of the Commission’s longstanding commitment to providing support that is “sufficient but not excessive.”<sup>42</sup> An important component of the Commission’s review of whether a carrier needs additional support is having an accurate picture of the financial operations of the waiver applicant. Information such as financial statements for the past three fiscal years and any outstanding loans should be readily available

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<sup>40</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

<sup>41</sup> To the extent a company views our waiver process as burdensome, we remind waiver applicants that the conclusions the Commission reached in the *USF/ICC Transformation Order* were based on a comprehensive and open public proceeding and represented a careful balancing of policies and equities that the Commission believed reach the correct outcome in nearly all cases. We urge companies seeking a waiver to demonstrate how the relief requested furthers the goals identified by the Commission in the *USF/ICC Transformation Order*.

<sup>42</sup> 47 U.S.C. §§ 254(b)(1), (b)(4)-(5), (d), (e). The Commission’s interpretation of the term “sufficient” to mean that support should not be excessive has been upheld by the Fifth, Tenth, and District of Columbia Circuit Courts of Appeals. See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (“The agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.”); *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (“excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1)”) (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)); *Rural Cellular Assn. v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009) (explaining that, in assessing whether universal service subsidies are excessive, the Commission “must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service”).

to any carrier. Such information is the sort of information that any company would maintain to manage its business, and would be part of any financial showing that a company would submit as part of any loan application process. Incumbent carriers are already required by Commission rules to comply with the Uniform System of Accounts specified in Part 32, the affiliate transaction rules specified in section 32.27, and the cost allocation rules specified in sections 64.901-64.902, so providing information regarding compliance with those rules should not be burdensome for any such carrier.<sup>43</sup> Information regarding end user rates and the services provided to subscribers likewise should be readily available to any service provider. In keeping with the focus on providing support that is sufficient but not excessive, Commission staff have asked for additional information from waiver applicants, such as annual compensation provided to the ten most highly paid employees, and the size and nature of payments made to affiliated companies. Again, this information should be readily available, and potential waiver applicants can expedite review of their requests by including such information when initially filing their waiver petitions. Such information can be relevant to a determination of whether there are opportunities for reductions in operating expenses that would lessen the burden on the Fund, and also to assessing whether carriers are complying with our affiliate transaction rules.

23. We decline the request that carriers should receive support under the Commission's previous rules until their waiver petitions are resolved.<sup>44</sup> To the extent immediate or interim relief is necessary while a waiver petition is evaluated, such relief can be provided on a case-by-case basis,<sup>45</sup> and such relief has been provided in one instance to date.<sup>46</sup> But we do not typically permit carriers to excuse themselves from complying with our rules, even on a temporary basis, simply by filing a request for waiver, and we are not persuaded that such a blanket policy is warranted in this context when case-by-case relief may be available.

24. *Filing Fee and Confidentiality.* We also address the Rural Associations' specific suggestions regarding the Commission's fee for filing a waiver petition and the confidential treatment of the waiver process. As an initial matter, we issue a blanket waiver of the filing fee for carriers seeking a waiver of the high-cost loop support (HCLS) benchmark rule contained in section 36.621(a)(5) of our rules.<sup>47</sup> We observe that section 1.1105 does not currently require a filing fee in connection with petitions for waiver of rules contained in Part 54 of the Commission's rules.<sup>48</sup> By codifying the benchmark rule in Part 36 rather than Part 54, the Commission inadvertently subjected applicants seeking a waiver of the benchmark rule to the Part 36 filing fee, even though parties seeking a waiver of other universal service reforms, such as the \$250 per line cap, are not subject to any filing fee. We conclude that this disparity in treatment does not serve the public interest, and we address the situation by issuing a blanket waiver of the fee for parties seeking a waiver of section 36.621(a)(5). We also clarify, as the Rural Associations request, that

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<sup>43</sup> 47 C.F.R. §§ 32.27, 64.901-64.902. Indeed, section 220(c) of the Communications Act specifies that the Commission shall have the right to examine all accounts and records of common carriers, and specifically states that the burden is on carriers to justify every accounting entry questioned by the Commission. 47 U.S.C. § 220(c).

<sup>44</sup> See *id.* at 2.

<sup>45</sup> See *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 27 FCC Rcd 6224 (2012).

<sup>46</sup> See *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Order, 27 FCC Rcd 6224 (Wireless Telecom. Bur. 2012).

<sup>47</sup> See NTCA 6/25/12 Ex Parte at 2.

<sup>48</sup> See 47 C.F.R. § 1.1105. Section 1.1105 specifies fees for waivers of some rules applicable to common carriers, such as waivers of Part 32 (accounting), Part 36 (separations), and Part 64 (cost allocation), but does not require a fee for waivers of other rules applicable to common carriers, such as Part 51 (interconnection), Part 52 (numbering), and Part 54 (universal service).

carriers filing waiver requests may seek confidential treatment pursuant to the Commission's existing rules.<sup>49</sup>

25. *Submission of Geographic Information.* Based on our review of the waiver applications received to date, and consistent with the Rural Associations' request, we reconsider the language in the *USF/ICC Transformation Order* regarding submission of information regarding the geographic and other characteristics of the areas that contribute to its high costs.<sup>50</sup> Paragraph 542 of the *Order* stated that petitions should include, among other things, the following information: "Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area's high costs."

26. On reconsideration, we conclude that this language in paragraph 542 should be viewed as illustrative examples of factors that could be relevant in the waiver analysis, to assist applicants in crafting well formulated waiver petitions in support of their requested relief. To the extent applicants choose to address such factors in their waiver petitions, we presume they would be providing information that is readily available, not requiring any additional expenditures or the devotion of substantial staff resources to compile.

27. *Submission of Information Regarding Spare or Unused Equipment.* On reconsideration, we also modify the language in paragraph 542 requesting information regarding spare or unused equipment. Paragraph 542 of the *Order* stated that petitions should include information regarding accounting for spare or unused equipment. We observe that waiver applicants to date have included a cursory recitation their waiver requests that they account for such equipment in accordance with the Commission's rules.<sup>51</sup> On reconsideration, we conclude that it is not necessary for carriers to reaffirm that they are in compliance with existing accounting rules. To the extent there are questions about such issues, however, the Bureau still may request such information. At this time, we cannot conclude that additional information relating to unused or spare equipment would be unnecessary in all instances.

28. *Submission of Audits and Information from State Rate Cases.* We are not persuaded that waiver applicants should be permitted to file USAC audits in lieu of their financial statements.<sup>52</sup> Compliance with the Commission's high-cost rules prior to the *USF-ICC Transformation Order* is not likely to be dispositive of whether there is an ongoing need for more support than the current rules would allow. As previously discussed, financial information is needed to ensure that support is sufficient, but not excessive, in granting additional support through the waiver process. A USAC audit does not provide such information and, therefore, is not an adequate substitute for a carrier's financial statements.

29. In contrast, information developed in intrastate earnings and rate cases is more likely to be of assistance when reviewing requests for waiver of support reductions, and could serve as a substitute for the submission of financial statements in some cases, depending on the specifics of the prior rate case or earnings review. We encourage carriers that would like to rely on such information, rather than financial statements, to bring it to staff's attention when preparing their waiver requests.<sup>53</sup> We generally encourage

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<sup>49</sup> See NTCA 6/25/12 Ex Parte at 3; see also 47 C.F.R. § 0.459 (Requests that materials or information submitted to the Commission be withheld from public inspection).

<sup>50</sup> See NTCA 6/25/12 Ex Parte at 3.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

staff to provide, and for potential waiver applicants to seek, guidance on the contents of a waiver request, and with respect to financial reviews by state commissions, we specifically encourage applicants to seek staff's input on the substitutability of such information for the company's financial statements.

30. *Information About Corporate Operations Expenses.* We decline to adopt the suggestion that carriers not provide information about their corporate operations expenses unless they are seeking a waiver specifically related to the corporate operations expense cap.<sup>54</sup> As discussed above, a full understanding of a carrier's financial circumstances is necessary when considering a waiver seeking additional support in order to ensure that support overall is sufficient but not excessive. Corporate operations expenses, including expenses such as executive salaries, are relevant to the determination of overall support levels in the face of a claim that existing rules provide inadequate support.

31. *Request to Exempt Costs of Waivers from Calculation of Caps.* The record lacks sufficient detail for us to evaluate how we would exempt costs incurred in preparing a waiver request from the calculation of corporate operations expenses that would count toward any caps.<sup>55</sup> Accordingly, we decline to allow such exemption at this time.

32. *Grounds for Waiver.* Finally, we also clarify that we will generally not require a thorough financial review of carriers that seek a limited waiver of our rules, such as a temporary waiver of a deadline for meeting our reporting requirements or a waiver seeking to provide broadband that does not meet our upstream requirements (i.e., 768 kbps upstream instead of 1 Mbps upstream). In such cases, we would expect a waiver application would explain why waiver is warranted under section 1.3 of the Commission's rules. Likewise, to the extent a carrier seeks a waiver of the HCLS benchmark rule based on a showing that there is a factual error with respect to one or more input values that results in an inaccurate calculation of the cap value, we would not need to conduct a full review of that carrier's finances. Rather, we would undertake a thorough financial review in those circumstances where the waiver applicant is not seeking to correct an error, but is contending that absent waiver, support levels would be insufficient for the carrier to achieve the purposes of section 254.

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act

33. This Fifth Order on Reconsideration contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

##### B. Final Regulatory Flexibility Act Certification

34. The Regulatory Flexibility Act ("RFA")<sup>56</sup> requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>57</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small

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<sup>54</sup> See NTCA 6/25/12 Ex Parte at 3.

<sup>55</sup> See *id* at 2.

<sup>56</sup> See 5 U.S.C. § 601 *et seq.* The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857.

<sup>57</sup> 5 U.S.C. § 605(b).

organization,” and “small governmental jurisdiction.”<sup>58</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>59</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>60</sup>

35. We hereby certify that the rule revisions in this Fifth Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. This Order modifies certain of our reporting requirements. We conclude that these minor revisions, though they may possibly have some impact on some carriers, are not likely to have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>61</sup> In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.<sup>62</sup>

### C. Congressional Review Act

36. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>63</sup>

## V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 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, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1 and 1.429 of the Commission’s rules, 47 C.F.R. §§ 1.1, 1.429, that this Fifth Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

38. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission’s rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Partial Reconsideration filed by the Blooston Rural Carriers on December 29, 2011 IS DENIED.

39. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission’s rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Reconsideration filed by NTCH, Inc. on December 29, 2011 IS DENIED IN PART to the extent described herein.

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<sup>58</sup> 5 U.S.C. § 601(6).

<sup>59</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. S § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>60</sup> Small Business Act, § 15 U.S.C. S 632.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *See* 5 U.S.C. 801(a)(1)(A).

40. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Reconsideration filed by General Communications, Inc. on December 23, 2011 IS DENIED IN PART to the extent described herein.

41. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Clarification or Partial Reconsideration filed by Townes Telecommunications, Inc. on December 29, 2011 IS DENIED.

42. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.291 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.429, the Petition for Reconsideration of National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

43. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.291 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.429, the Petition for Reconsideration of Rock Hill Telephone Company d/b/a Comporium, Lancaster Telephone Company d/b/a Comporium, Fort Mill Telephone Company d/b/a Comporium, PBT Telecom, Inc. d/b/a Comporium, and Citizens Telephone Company d/b/a Comporium IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

44. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.291 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.429, the Petition for Reconsideration of United States Telecom Association IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

45. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

46. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

## Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

**PART 54—UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

**Subpart D—Universal Service Support for High Cost Areas**

2. Amend § 54.313 to read as follows:

**§ 54.313 Annual reporting requirements for high-cost recipients.**

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(f) \* \* \*

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(2) Privately held rate-of-return carriers only. A full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year.

(i) Recipients of loans from the Rural Utility Service (RUS) shall provide copies of their RUS Form 479 as filed with the RUS. Such carriers must make their underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(ii) All privately held rate-of-return carriers that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: (1) a copy of their audited financial statement; or (2) a financial report in a format comparable to RUS Form 479, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit. A carrier choosing the latter option must make its audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(iii) All other privately held rate-of-return carriers must provide either: (1) a copy of their financial statement which has been subject to review by an independent certified public accountant; or (2) a financial report in a format comparable to RUS Form 479, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: (a) the carrier was not audited in the ordinary course of business for the preceding fiscal year; and (b) that the reported data are accurate. If the carrier elects the second option, it must make the review and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

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**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Mobility Fund*, WC Docket Nos. 10-90, 07-35, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208

Last year, the Commission took historic steps to update its high-cost universal service fund and intercarrier compensation system. It did so to refocus these longstanding policies from the communications challenge of the last century—voice telephony—to the broadband and wireless networks so essential for 21<sup>st</sup> century economic and civic life. In doing so, it also put the high-cost fund on a budget and required greater accountability from fund recipients. These are good developments.

Today, we make adjustments to our financial reporting obligations for privately-held rate of return companies and provide further guidance and clarification on our standard for requests for waiver of our universal service reforms, which I fully support. However, this agency's reforms to the high-cost universal service system are extremely complex. I fear that this complexity can deny rural carriers dependent on them the certainty they need to confidently invest in their network infrastructure. So when opportunities arise to simplify our rules in a manner that is fiscally sound, good for investment, and good for rural consumers—I think we should seize them.

To this end, I look forward to working with my colleagues at the Commission to act quickly on two fronts. First, I believe we should combine the two separate capital and operating expense benchmarks into one benchmark to simplify the regression analysis and provide carriers with flexibility to meet our new limits. Second, I believe we need to take a hard look at keeping our benchmarks in place for a longer period of time, instead of resetting them annually. I think this would help ensure that we have in place a more predictable system that provides carriers with more confidence to invest in broadband infrastructure.