

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

CONNECT AMERICAN FUND)	Docket No. 10-90
)	
ETC ANNUAL REPORTS AND CERTIFICATIONS)	Docket No. 14-58
)	
DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME)	Docket No. 01-92
)	
CONNECT AMERICA FUND – ALASKA PLAN)	Docket No. 16-271

**PETITION FOR RULEMAKING
OF
NTCA-THE RURAL BROADBAND ASSOCIATION**

To the Commission:

I. INTRODUCTION

Pursuant to Section 1401 of the rules of the Federal Communications Commission (Commission), NTCA-The Rural Broadband Association (NTCA)¹ respectfully submits this Petition for Rulemaking (Petition). Specifically, NTCA seeks an amendment of 47 C.F.R. § 54.313 to relieve certain rate-of-return carriers of the obligation to submit audited financial statements to the Commission. This amendment would apply to companies that obtain high-cost

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many also provide fixed and mobile wireless, video and other competitive services in rural America.

universal service support through the Alternative Connect America Model (ACAM) or other mechanisms that derive from fixed support.² For the reasons set forth below, grant of this request would align treatment of these recipients with other companies that obtain model-based or other forms of fixed-amount support through the Connect America Fund (CAF). This result would increase administrative efficiency for both the Commission and companies, as well as lower direct and implicit costs associated with the creation of the required financial reports. This measure would moreover serve the public interest by reducing unnecessary costs and burdens, thereby enabling the direction of provider resources toward actual broadband deployment.

Section 1.401 of the Commission’s rules provides, “Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.” As set forth herein, amendment of the rule will serve the interest of the companies represented by NTCA, the petitioner, and will moreover promote the public interest by furthering regulatory parity, allowing resources to be focused more upon the deployment and operation of broadband-capable networks, and reducing burdens on both the affected industry as well as the Commission. For the reasons set forth herein, NTCA commends the Commission to grant the Petition.

² By way of example, the relief contemplated in this petition would pertain as well to companies that participate in the Alaska Plan, which provides Alaskan rate-of-return carriers with “the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations” *Connect America Fund; Universal Service Reform – Mobility Fund, Connect America Fund – Alaska Plan: Report and Order and Further Notice of Proposed Rulemaking*, Docket Nos. 10-90, 10-208, 16-271, FCC 16-115, at para. 6 (2016).

II. DISCUSSION

A. THE COMMISSION HAS PREVIOUSLY DECLINED TO APPLY FINANCIAL REPORTING RULES TO SIMILARLY SITUATED COMPANIES

Section 54.313 of the Commission's rules currently requires privately held rate-of-return carriers that obtain high-cost support to provide:

A full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the Commission, and accompanied by report of such an audit. The annual report shall include balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements.³

This provision was adopted as part of the *Transformation Order*⁴ in 2011, at a time when all RLECs were recipients of cost-based universal service support. Although the Commission may deem it helpful and appropriate to obtain independently verified statements to support carriers' claims for cost-based support, in contrast, and as recognized explicitly by the Commission in that very same order, this imperative does not exist in the case of companies that obtain model-based or other forms of fixed-amount support. Indeed, the Commission established in the *Transformation Order* that where a recognized mechanism ensures that support is "disciplined by market forces," such independent third-party verification is not necessary.

³ 47 CFR § 54.313(f)(2).

⁴ *Connect America Fund (Dkt. No. 10-90); A National Broadband Plan for Our Future (Dkt. No. 09-51); Establishing Just and Reasonable Rates for Local Exchange Carriers (Dkt. No. 07-135); High-cost Universal Service Support (Dkt. No. 05-337); Developing a Unified Intercarrier Compensation Regime (Dkt. No. 01-92); Federal-State Board on Universal Service (Dkt. No. 96-45); Lifeline and Link-Up (Dkt. No. 03-109); Universal Service Reform – Mobility Fund (Dkt. No. 10-208); Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) (Transformation Order).*

Specifically, the Commission weighed financial reporting obligations for various kinds of eligible telecommunications carriers (ETCs). For publicly traded companies, the Commission noted that requisite information could be obtained from Securities and Exchange Commission (SEC) reports.⁵ Turning to privately-held recipients of model-based support, the Commission observed in the *Transformation Order*,

we conclude at this time it is not necessary to require the filing of such information by recipients of funding determined through a forward-looking cost model or through a competitive bidding process, even if those recipients are privately held. We expect that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive, and that support awarded through competitive processes will be disciplined by market forces.⁶

Since this time, additional providers have been given the opportunity to elect model-based support, and hundreds of providers have accepted those offers. In light of these developments, NTCA submits that this same approach should be extended to privately held rate-of-return companies that obtain high-cost support through the ACAM and other mechanisms that distribute fixed support.

The ACAM was established in 2016 to provide forward-looking model-based funding to rate-of-return carriers.⁷ Companies accepting ACAM are as “disciplined by market forces” as the other privately-held firms that were exempted from certain financial reporting requirements in the *Transformation Order*; the ACAM is, in fact, largely based upon the model that distributes

⁵ Transformation Order at para. 596.

⁶ Transformation Order at para. 596.

⁷ See, *Connect America Fund (Dkt. No. 10-90)*; *ETC Annual Reports and Certifications (Dkt. No. 14-58)*; *Developing a Unified Intercarrier Compensation Regime (Dkt. No. 01-92): Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, FCC 16-33 (2016).

support to larger operators. Accordingly, waiver of the requirements to otherwise provide the Commission with the full spectrum of “balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements”⁸ will meet the Commission’s interest because inasmuch as the ACAM was also “developed through a transparent and rigorous process,” it necessarily “produce[s] supports levels that are sufficient but not excessive.”⁹ Accordingly, assurance that funding levels are disciplined and constrained by market forces arises *ipso facto*, and independent verification via outside reporting is not necessary. Moreover, waiver of the rule will meet the public interest because it will reduce administrative burdens and costs that would otherwise be borne by both the Commission and the companies subject to the rule.

B. AMENDMENT OF THE RULE WILL PROMOTE REGULATORY PARITY AND ENABLE MEANINGFUL RELIEF

Amendment of the rule will promote regulatory parity by ensuring that similarly situated companies, specifically, those whose high-cost support derives from fixed support amounts, are subject to similar regulatory requirements. This would create efficiencies for both carriers and the Commission, and benefit consumers of the companies who could realize the benefit of resources put toward the deployment and operation of broadband-capable networks in lieu of comporting with these financial reporting measures. Finally, NTCA notes that these benefits accrue even in instances in which high-cost support recipients will engage auditors in the normal and ordinary course of business.

⁸ 47 CFR § 54.313(f)(2).

⁹ See, e.g., Transformation Order at para. 596.

As an overview, an informal survey of industry consultants revealed that the cost of preparing audited financial statements to satisfy Commission requirements can run from the “low-teens” to six-figures. As is the case with professional fees of nearly any type, actual per-company costs will depend upon the size of a particular company and the relative complexity of its corporate structure. By way of example, a firm with 15,000 or few subscribers would be estimated to incur external fees of \$20,000-\$38,000, with internal staff costs equivalent to \$60,000; internal costs include time for preparation, auditor assistance and follow-ups. The addition of a subsidiary could be expected to add between \$9,500-\$16,500, with additional internal staff costs. Larger companies with more than 15,000 subscribers could be expected to incur greater expenses. NTCA notes that while these examples are drawn from an informal survey, they nevertheless illustrate the *general* range of expenses that companies can expect to incur.

As NTCA notes, amendment of the Commission rule would not encourage carriers to ignore prudent practices as undertaken by responsible companies in the normal and ordinary course of business. Private lenders rely upon the audit and review process, and company leaders, whether commercial or cooperative, obtain trust through the third-party verification conferred by the audit process. Toward these ends, NTCA does not propose that its members who are the subject of this amendment request would have an intention of operating in the absence of prudent financial practices. Rather, the instant request is to obtain relief from a specific Federal requirement and its associated prescribed deadlines. Moreover, amendment of the filing requirement would relieve both the Commission and carriers of potential risks arising out of the distribution (by the carriers) and receipt and maintenance (by the Commission) of proprietary information for which, as described above, there is no effective need to produce or circulate.

Finally, amendment will relieve the Commission of administrative efforts to receive, document and review the financial reports. These benefits complement the general principles promoting regulatory parity and support the request for relief as presented herein.

III. CONCLUSION

WHEREFORE the reasons stated herein and above, inasmuch as the Commission has previously noted that audited financial statements are not necessary for regulatory oversight when a carrier obtains model-based or another form of fixed-amount support, amendment of the rule for companies receiving model-based and other forms of fixed support will put all such recipients of such support on equal footing consistent with the Commission's own prior findings and enable the companies to maintain fiscal fidelity in a manner and schedule that best meets the individual needs of the company, and without the accrual of additional burdens to both the carriers and the Commission.

Respectfully submitted,

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DRAFT RULE

§ 54.313 Annual Reporting Requirements for High-Cost Recipients

(f)(2) Privately held rate-of-return carriers only. Privately held rate-of-return carriers that do not receive CAF-ACAM support or which do not receive Alaska Plan support pursuant to § 54.306 shall provide a ~~A~~ full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year.