

COMPTEL

The Communications Association of Choice

February 2, 2009

The Honorable Max Baucus  
Chairman, U.S. Senate Finance Committee  
511 Hart Senate Office Building  
Washington, D.C. 20510

Re: Internal Revenue Code Section 382

Dear Chairman Baucus:

COMPTEL is the leading industry association representing competitive communications service providers and their supplier partners. COMPTEL's more than 200 members are entrepreneurial companies that build and deploy next-generation broadband networks that help drive technological innovation and economic growth with competitive voice, data, and video service offerings throughout the United States.

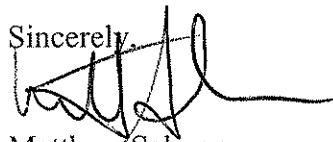
I am writing to ask your support for a proposal to temporarily amend the ownership change rules codified in Internal Revenue Code Section 382 as part of the economic recovery package that is pending before the Senate. During these troubled economic times when access to credit is extremely limited, if available at all, increasing the benchmark for an ownership change in Section 382 from 50% to 80% over any three year test period that includes 2008 or 2009 will go a long way toward preserving jobs and encouraging economic growth and investment in infrastructure and technology.

COMPTEL's members, and other telecommunications companies in general, are heavily invested in the networks used to deliver broadband and other innovative services to the American public. Constructing, operating and expanding these networks, especially to provide advanced communications services to unserved and underserved areas, are capital intensive endeavors. Many companies that rely on the credit market to help fund jobs and network deployment have been hard hit by the ongoing economic crisis. The extreme volatility that the stock market has experienced of late, the downward pressure on corporate stock prices and the frozen credit markets have created an environment where companies need cash and are forced to make difficult choices regarding both jobs and investment.

Unfortunately, Internal Revenue Code Section 382 creates a *disincentive* for companies seeking to refinance their debt, convert debt to equity or raise additional equity. With today's depressed stock prices, a company raising additional capital in the equity market could easily exceed the 50% "change of control" threshold set forth in Section 382 and thereby trigger the limitations on the use of the company's net operating loss carryovers. Surrender of net operating loss carryovers under these circumstances can impose significant additional costs on companies needing additional capital to resume growth and expansion.

The proposed temporary amendment to Section 382 would enable companies that are experiencing difficulties in refinancing debt to raise new capital in the equity markets but avoid triggering a statutory ownership change that would limit their ability to use net operating loss carryovers. This modification would promote the flow of capital and create immediate economic stimulus by increasing the supply of funds available for job creation and preservation. By temporarily raising the ownership threshold used to determine when a Section 382 limitation is triggered, the proposed change would somewhat ameliorate the negative tax consequences the extraordinary volatility in the stock market has caused for companies hoping to raise capital by issuing stock. It would not only preserve the original legislative objectives of Section 382, but it would also reduce the unintended impediment to balance sheet restructuring that Section 382 has unfortunately created in these tumultuous economic times. For these reasons, COMPTEL encourages you to support the temporary amendment to Section 382.

Sincerely,



Matthew Salmon  
President