Regulatory News

FCC Issues Final Rules on UNEs; ICC Reforms Considered

The Federal Communications Commission (FCC) is taking actions in 2005 that will reshape the telecommunications industry, including prices and services available to small businesses. First are the newly issued final rules on unbundled network elements; second is a proposed rulemaking on intercarrier compensation reform. These two rules stand to affect small businesses in at least two distinct dimensions: as telecom providers and telecom customers.

The Telecommunications Act of 1996 required incumbent telecom carriers (such as Verizon) to make portions of their elements available to competitors at a regulated rate, hence the birth of hundreds of competitive carriers in the period following the FCC's implementation of the act. On February 4, 2005, the FCC published new final rules on unbundled network elements in response to a remand from the U.S. Court of Appeals for the D.C. Circuit. The final rule can be accessed at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-290A1.pdf*.

The FCC's new rules on unbundled network elements included several changes. First, they removed unbundled access to switching for residential and single-line small businesses. This means that any small telecom carrier must install its own switching equipment at the end office of the telephone network to provide local service.

Second, the FCC created thresholds for unbundling of DS1- and DS3-capacity dedicated transport. If the number of business-access lines or the number of fiber-based collocators exceeds the threshold, the incumbent is not obligated to provide transport on an unbundled basis. Similarly, the FCC created thresholds for unbundling high-capacity loops in buildings with multiple fiber-based collocators and a high number of business-access lines.

The reforms to intercarrier compensation (ICC) will have an impact on small providers and customers in general. Intercarrier compensation is the FCC's term for the payments that are made between carriers for access to each others' networks. The current rules on intercarrier compensation are a mixture of compensation regulations that have accumulated over the years and are based upon type of service and the distance of the call.

On February 10, 2005, the FCC adopted a further notice of proposed rulemaking that solicits comment on seven reform proposals submitted by the industry. Each of these proposals has a different plan for reforming intercarrier compensation. The FCC is seeking comment on reform proposals submitted by the following organizations:

- Intercarrier Compensation Forum (ICF);
- Expanded Portland Group (EPG);
- Alliance for Rational Intercarrier Compensation (ARIC);
- Cost-Based Intercarrier Compensation Coalition (CBICC);
- Home Telephone Company and PBT Telecom;
- Western Wireless; and
- National Association of State Utility Consumer Advocates (NASUCA).

The reform proposals may be viewed on the FCC website, at *www.fcc.gov/wcb/ppd* under the heading "Intercarrier Compensation Reform." Brief descriptions are available in the news release at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-256705A1.pdf*. The proposals have not yet been officially published in the *Federal Register*, nor has the comment deadline been set. Advocacy will publish this information on the Regulatory Alerts page as soon as it is released (*www.sba.gov/advo/laws/law_regalerts.html*). The impact of this rulemaking is difficult to discern at this moment, as the FCC has not yet determined and made public which plan it is adopting. Advocacy intends to review each of the plans and welcomes your input and help to identify small business impacts as well as significant alternatives. Please contact Eric Menge, assistant advocate for telecommunications, at *eric.menge@sba.gov* or (202) 205-6949.

The Small Business Advocate

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Message from the Chief Counsel

Advocacy's Legislative Agenda: Strengthen the Regulatory Flexibility Act

by Thomas M. Sullivan, Chief Counsel for Advocacy

I have often talked about the importance of the Office of Advocacy's attorneys and economists in convincing regulatory agencies to properly consider their impact on small entities. The important thing to remember, however, is that the proposed regulations that we consider are brought to our attention by you—the small business community. Our agenda is your agenda.

That is one of the reasons my office accepts as many invitations to meet with small business groups as it can. It is also why Advocacy has an aggressive outreach effort. We have numerous roundtables where small business representatives meet and give us direction on specific issues. We have publications like this newsletter to let you know what we are doing and to ask your advice on prioritizing our agenda.

As a result of these ongoing efforts, Advocacy has mapped out a legislative agenda to pursue in the new Congress that will help Advocacy live up to its full potential. While Advocacy has clearly been successful in averting costly small business regulatory impacts (the office was able to save $17 billion in foregone regulatory costs for small business this past year), it is equally clear that more needs to be done.

In particular, our prime tool, the Regulatory Flexibility Act (RFA), which requires agencies to consider small business concerns in the regulatory process, has some holes. Fixing these would go a long way toward solidifying small business's voice in the regulatory process. Representative Donald Manzullo, Chairman of the House Small Business Committee, has introduced HR 682, the Regulatory Flexibility Improvements Act, which seeks to improve the law's effectiveness.

While Advocacy has clearly been successful in averting costly small business regulatory impacts, more needs to be done.

The following four amendments are Advocacy's legislative agenda for the 109th Congress.

Review Existing Regulations. First is the need for a tool to deal with existing regulations. While government is doing a better and better job of filtering out unnecessary burdens when adopting new regulations, small business is limited in what it can do with those regulations that are already on the books. Section 610 of the RFA requires agencies to review their rules every 10 years. Unfortunately, agencies have been reviewing only those rules that were determined to significantly affect a substantial number of small entities at the time they were promulgated. The RFA should be amended to have agencies review all rules every 10 years to ensure that they are up to date.

Consider Indirect Impacts. Next, the RFA requires agencies to conduct small business impact analysis on those rules that have direct impacts on the business community. However, rules that are passed on to the states to enforce are exempt from such analysis (the Clean Air Act, for instance). This amounts to passing on the duty of regulating to the states without any corresponding analysis or requirements for states to consider less burdensome alternatives for small business. The RFA should be amended to require agencies to consider "indirect impact" in order to help state officials craft less burdensome regulatory alternatives.

Compliance Guides. Although the 1996 amendments to the RFA required agencies to provide plain English compliance guides to clearly explain rules, various studies have indicated that this is not being done well. Senator Olympia J. Snowe, chair of the Senate Committee on Small Business and Entrepreneurship, introduced legislation in the last Congress that would provide greater certainty that new regulations would be accompanied by compliance guides to assist the small business community. The Office of Advocacy supports Senator Snowe's legislation.

Codify Executive Order 13272. President Bush signed Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking. It has worked well and is a strong statement of this Administration's commitment to small business and regulatory relief. Small businesses would benefit by amending the RFA to codify the requirements of Executive Order 13272, ensuring that independent agencies are covered and creating long-term certainty of small business consideration in rulemaking.

The 25-year history of the RFA proves that you can sensitize regulatory agencies to their impacts on small business without sacrificing agency priorities and protections. The 109th Congress has an opportunity to build upon that record by passing these four targeted amendments to the RFA.

As always, my office is proud to advocate on behalf of small business, and this legislative agenda is one more way for us to follow your direction.

Regional Roundup

Executive Order Signed in Arkansas; Regulatory Flexibility Legislation Considered in 12 States

Small business owners and organizations across the country are encouraging state officials and state legislators to make small business regulatory flexibility a priority this year. In Arkansas, Governor Mike Huckabee signed an executive order on February 1, 2005, that will implement components of Advocacy's state regulatory flexibility model legislation. The executive order gives Arkansas's small businesses a voice in the state's regulatory process. "Arkansas's small business owners now have a seat at the table when regulatory decisions are made," said Thomas M. Sullivan, chief counsel for advocacy, who met with Governor Huckabee in February. "When their voice is heard, better decisions are made, and that means more jobs and growth for Arkansas."

In addition, small business regulatory flexibility legislation has been introduced in 12 states:

- Alaska (HB 33);
- Hawaii (HB 602/SB 422);
- Indiana (HB 1822);
- Mississippi (HB 1472/SB 2795);
- Montana (HB 630)
- New Jersey (A 255/S 1166);
- New Mexico (HB 869/SB 842);
- Ohio (SB 15);
- Tennessee (HB 1276/SB 279);
- Utah (HB 209);
- Virginia (HB 1948/SB 112); and
- Washington (HB 1445/SB 5920).

To monitor the activity on these bills, please check your state legislature's website. For information on Advocacy's regulatory flexibility model legislation, see *www.sba.gov/advo/laws/law_modeleg.html*.

Chief Counsel Addresses "Business Days at the Capitol"

To kick off the start of the Montana legislature's 90-day biennial session, the Montana Chamber of Commerce hosted its largest membership event of the year, Business Days at the Capitol, in January. Chief Counsel Thomas M. Sullivan gave the keynote speech at the Legislator Appreciation Banquet. Over half of the members of the state legislature were present.

Sullivan's speech focused on President's Bush's continued emphasis on small business during his second term, including further tax simplification and ending lawsuit abuses. Sullivan also explained the unusual role the Office of Advocacy plays—a watchdog for small business working inside the federal government. He also reviewed Advocacy's state regulatory flexibility initiative, noting that in 2004, 17 state legislatures considered enacting regulatory flexibility provisions or strengthening existing ones, and seven governors signed bills into law.

Sullivan also briefed Evan Barrett and Tony Priete, two members of Governor Brian Schweitzer's cabinet, on how enacting the model legislation would enhance the state's "open door" approach to addressing the regulatory concerns of small businesses. There is clearly a desire to become more small business friendly in Montana. On February 9, state Representative Scott Mendenhall introduced HB 630, a bill based on the Office of Advocacy's model legislation. By the end of February, HB 630 had passed the Montana House of Representatives (87 to 11) and was transmitted to the Montana Senate for its consideration.

During a recent trip to Montana, Chief Counsel Thomas M. Sullivan met with Montana Senator Conrad Burns (left) and Summit Aeronautics owner Thomas Hoffman (center). Summit Aeronautics, headquartered in Helena, produces aluminum wing tips for F-22 fighter jets, titanium tooling parts, and other production for military use. Summit Aeronautics started in 1997 with four employees and now employs over 50 people. Photo by Eliza Wiley, *Independent Record*. Used by permission.

Office of Advocacy

A Voice for Small Business

QUARTERLY INDICATORS: THE ECONOMY AND SMALL BUSINESS

Fourth Quarter 2004

Trends

- The U.S. economy was significantly stronger in 2004 than in recent years. Real gross domestic product (GDP) increased 4.4 percent for the year – its highest jump since 1999. The 3.1 percent increase in the fourth quarter marked the thirteenth consecutive quarter of positive growth. Moreover, between the fourth quarters of 2003 and 2004, real personal consumption expenditures, real gross private fixed investment, and real exports rose 3.9, 10.6, and 4.1 percent, respectively. Industrial production was also up by 4.3 percent over the year. On the negative side, real imports outpaced the growth in real exports with a 9.2 percent increase in 2004, continuing a pattern of large trade imbalances.
- Americans, by and large, were more optimistic in the fourth quarter, according to both the National Federation of Independent Business' Optimism Index and the University of Michigan's Consumer Sentiment Survey. The December NFIB survey also shows that 28 percent more small businesses plan to expand rather than contract in the next three months, and the net percentage planning to hire in the next three months is 17 percent. Each of these figures exceeds the annual averages over the past five years.
- The unemployment rate fell to 5.4 percent in September 2004, and ended the year at that same rate. For the year, the economy added 2.2 million nonfarm payroll jobs, 606,000 in the fourth quarter. These new jobs in the fourth quarter were in every industry sector, with the exception of manufacturing, which lost 12,000 workers. Overall manufacturing employment was up 76,000 workers for the year. Nonfarm productivity increased just 0.8 percent in the fourth quarter, significantly lower than in previous quarters and years; over the longer view, however, it increased 4.1 percent between the averages of 2003 and 2004.
- Interest rates have continued to move upward as a result of a growing economy and the efforts of the Federal Reserve to reduce inflationary pressures. Consumer and producer prices increased at annualized rates of 3.0 and 6.7 percent, respectively, in the fourth quarter; if energy costs are excluded, the rates are 1.2 and 3.9 percent, respectively. The price of oil fell from an average of $53.13 a barrel in October to $43.33 a barrel in December.
- According to the Senior Loan Officers Survey, small business demand for commercial and industrial loans remained strong; a quarter of all respondents continued to ease rather than tighten lending standards. In 2004, $2 billion more was invested in venture capital deals than in 2003, according to the National Venture Capital Association; $5.3 billion was invested during the fourth quarter.

Small Business Indicators

	Last five years					Last five quarters				
	2000	2001	2002	2003	2004	Q4-03	Q1-04	Q2-04	Q3-04	Q4-04
Business bankruptcy filings (thousands)	35.5	40.1	38.5	35.0	--	8.3	10.6	8.2	7.6	--
Proprietors' income (billions of current dollars)	728.4	771.9	769.6	834.1	902.4	864.7	872.1	901.4	902.9	933.1
Prime bank loan rate	9.2	6.9	4.7	4.1	4.3	4.0	4.0	4.0	4.4	4.9
Rates for smallest loans (less than $100,000): Variable rate loans, repricing terms of 2-30 days	9.7	7.4	5.1	4.4	4.4	4.3	4.3	4.2	4.6	4.5
Variable rate loans, repricing terms of 31-365 days	9.9	8.7	6.6	6.4	6.2	6.1	6.1	6.1	6.3	6.5
Senior loan officers (percent of respondents): Net small firm C&I lending standards (those whose standards were eased minus those tightened)	-20.4	-39.4	-20.0	-7.1	+13.1	+1.8	+10.9	+19.6	+3.7	+18.2
Net small firm demand for C&I loans (those whose demand was stronger minus those weaker)	-3.3	-36.6	-40.0	-14.7	+25.9	-3.9	+21.8	+38.1	+38.9	+25.5
Venture investment: number of deals	8073	4617	3050	2847	2876	754	686	798	645	747
Venture investment: total invested (billions of dollars)	105.9	41.0	21.6	18.9	20.9	5.4	5.1	6.0	4.6	5.3

Note: The fourth quarter figure for the Senior Loan Officers Survey is for October, which measures from July. C&I loans refers to commercial and industrial loans.
Sources: Administrative Office of the U.S. Courts; Board of Governors of the Federal Reserve System; National Venture Capital Association; U.S. Bureau of Economic Analysis.

	Last five years					Last five months (2004)				
	2000	2001	2002	2003	2004	Aug	Sept	Oct	Nov	Dec
NFIB Small Business Optimism Index (1986 = 100)	100.3	98.4	101.2	101.3	104.6	102.9	104.5	103.9	107.7	106.1
NFIB: next 3 months "good time to expand" (percent of respondents)	19.2	12.3	14.3	15.7	22.3	19	23	20	29	28
NFIB: net percent planning to hire in the next 3 months	15.6	11.6	10.8	10.2	15.3	19	14	15	19	17
Self-employed, incorporated (millions)	4.5	4.5	4.6	5.0	5.2	5.3	5.2	5.2	5.1	5.0
Self-employed, unincorporated (millions)	10.2	10.1	9.9	10.3	10.4	10.6	10.5	10.6	10.5	10.4

Sources: National Federation of Independent Business; Current Population Survey, U.S. Bureau of Labor Statistics

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For previous quarterly indicators, visit ***http://www.sba.gov/advo/research/sbei.html.*** Note that data are revised periodically, and this version reflects such changes.

Employment by Major Sector (millions)

	Percent small business	Last five years					Last five months (2004)				
		2000	2001	2002	2003	2004	Aug	Sept	Oct	Nov	Dec
Goods-producing industries	*54.1*	**24.65**	**23.88**	**22.56**	**21.82**	**21.89**	**21.94**	**21.96**	**22.02**	**22.02**	**22.03**
Natural resources and mining	*50.6*	0.60	0.61	0.58	0.57	0.59	0.59	0.59	0.59	0.60	0.60
Construction	*85.1*	6.79	6.83	6.72	6.72	6.92	6.94	6.96	7.02	7.03	7.03
Manufacturing	*41.6*	17.27	16.44	15.26	14.52	14.38	14.41	14.41	14.41	14.40	14.40
Service-producing industries	*49.2*	**107.14**	**107.96**	**107.79**	**108.12**	**109.39**	**109.60**	**109.70**	**109.96**	**110.09**	**110.24**
Trade, transportation and utilities	*47.1*	26.22	25.99	25.50	25.28	25.48	25.52	25.52	25.56	25.58	25.58
Wholesale trade	*62.9*	5.93	5.77	5.65	5.61	5.65	5.65	5.66	5.67	5.68	5.70
Retail trade	*43.4*	15.28	15.24	15.02	14.92	15.03	15.05	15.03	15.06	15.06	15.04
Information	*26.5*	3.63	3.63	3.39	3.20	3.17	3.17	3.16	3.16	3.16	3.16
Financial activities	*40.2*	7.69	7.81	7.85	7.97	8.05	8.05	8.08	8.09	8.11	8.12
Professional and business services	*44.2*	16.67	16.48	15.98	15.99	16.45	16.52	16.55	16.64	16.66	16.71
Education and health services	*47.5*	15.11	15.65	16.20	16.58	16.92	16.97	16.98	17.05	17.09	17.13
Leisure and hospitality	*61.2*	11.86	12.03	11.99	12.13	12.32	12.34	12.35	12.36	12.39	12.40
Other services	*85.5*	5.17	5.26	5.37	5.39	5.41	5.41	5.41	5.41	5.42	5.42
Government	*0*	20.79	21.12	21.51	21.57	21.60	21.63	21.65	21.68	21.69	21.72

Notes: Seasonally adjusted. See http://www.bls.gov/ces/cessuper.htm for NAICS code equivalents for each sector. The small business percentage by sector is based on 2001 firm size data. See http://www.sba.gov/advo/stats/us_tot_mi.pdf for more information.

Sources: U.S. Small Business Administration, Office of Advocacy, using data from the U.S. Department of Commerce, Bureau of the Census; U.S. Department of Labor, Bureau of Labor Statistics.

Macroeconomic Indicators

	Last five years					Last five quarters				
	2000	2001	2002	2003	2004	Q4-03	Q1-04	Q2-04	Q3-04	Q4-04
Annual change, real gross domestic product	3.7	0.8	1.9	3.0	4.4	4.2	4.5	3.3	4.0	3.1
Real personal consumption expenditures (billions)*	6739.4	6910.4	7123.4	7355.5	7634.7	7466.8	7543.0	7572.4	7667.8	7755.4
Real gross private fixed investment (billions)*	1735.5	1598.4	1560.7	1628.8	1839.1	1714.1	1764.5	1842.9	1853.9	1895.1
Federal government surplus or deficit (billions)	189.5	46.7	-254.5	-364.6	--	-379.2	-391.0	-380.0	-384.1	--
Real exports of goods and services (billions)*	1096.3	1036.7	1012.4	1031.8	1115.3	1076.2	1095.4	1114.8	1131.1	1120.0
Real imports of goods and services (billions)*	1475.8	1435.8	1484.4	1550.3	1701.7	1604.5	1645.5	1695.1	1714.3	1751.9
Corporate profits after tax (billions)	552.8	563.2	690.7	786.2	--	876.8	909.1	902.7	864.7	--
Nonfarm business sector output per hour for all persons (1992 = 100)	115.3	117.8	123.5	129.0	134.2	131.7	132.8	134.1	134.7	135.0
Employment Cost Index: private sector wages and salaries (1989 = 100)	146.0	151.4	156.4	161.0	165.0	162.5	163.5	164.4	165.8	166.4
Employment Cost Index: private sector benefits (1989 = 100)	156.0	163.7	171.7	182.5	195.4	186.3	191.2	194.5	196.4	199.3

*Chained 2000 dollars.

Note: Seasonally adjusted.

Sources: U.S. Department of Commerce, Bureau of Economic Analysis; U.S. Department of Labor, Bureau of Labor Statistics.

	Last five years					Last five months (2004)				
	2000	2001	2002	2003	2004	Aug	Sept	Oct	Nov	Dec
Unemployment rate (seasonally adjusted)	4.0	4.8	5.8	6.0	5.5	5.4	5.4	5.5	5.4	5.4
Civilian employment – 16 years and older (millions, seasonally adjusted)	136.9	136.9	136.5	137.7	139.2	139.7	139.5	139.8	140.3	140.2
Civilian unemployed – 15 weeks and over (millions, seasonally adjusted)	1.3	1.8	2.9	3.4	3.1	2.9	3.0	3.0	3.0	3.0
Nonfarm payrolls (millions, seasonally adjusted)	131.8	131.8	130.3	129.9	131.3	131.5	131.7	132.0	132.1	132.3
Producer Price Index (1982 = 100)	132.7	134.2	131.1	138.1	146.6	148.0	147.7	149.8	151.3	150.1
Consumer Price Index (seasonally adjusted, 1982 = 100)	172.2	177.0	179.9	184.0	188.9	189.4	189.7	190.9	191.2	191.1
Consumer Sentiment Survey (1966 = 100)	107.6	89.2	89.6	87.6	95.2	95.9	94.2	91.7	92.8	97.1
Spot oil price per barrel: West Texas intermediate crude	30.30	25.92	26.10	31.14	41.44	44.94	45.95	53.13	48.46	43.33
ISM Purchasing Managers Index – manufacturing composite (seasonally adjusted)	51.7	43.9	52.4	53.3	60.5	59.6	59.1	57.5	57.6	57.3
Industrial production (1997 = 100, seasonally adjusted)	115.4	111.3	111.0	110.9	115.5	116.0	115.7	116.6	116.8	117.8
M2 money stock (billions, seasonally adjusted)	4801.4	5219.3	5614.5	5998.4	6266.8	6300.2	6332.8	6346.9	6380.5	6397.7
3-month Treasury bills (secondary market rate)	5.82	3.39	1.60	1.01	1.37	1.48	1.65	1.76	2.07	2.19
10-year Treasury note (constant maturity rate)	6.03	5.02	4.61	4.02	4.27	4.28	4.13	4.10	4.19	4.23

Sources: Board of Governors of the Federal Reserve System; Dow Jones Energy Service; Institute for Supply Management; U.S. Department of Labor, Bureau of Labor Statistics; University of Michigan's Survey of Consumers.

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For previous quarterly indicators, visit ***http://www.sba.gov/advo/research/sbei.html.*** Note that data are revised periodically, and this version reflects such changes.

Economic News

New Report Details Minority Businesses' Expansion, Contraction, Survival Rates, 1997-2001

Minority-owned businesses expand, contract, and survive at rates that differ from non-minority owned businesses, according to a study released in February by the Office of Advocacy of the U.S. Small Business Administration. The report tracks the success of minority-owned employer establishments that were in operation from 1997 to 2001.

"This report provides new insights into the dynamics of minority-owned business establishments," said Chad Moutray, chief economist for the Office of Advocacy. "These insights are important for policymakers working to expand an ownership society to all segments of our society."

Released at the Institute for Entrepreneurship, Leadership, and Innovation at the Howard University School of Business, the findings of *Dynamics of Minority-Owned Employer Establishments, 1997-2001* include the following:

• During 1997-2001, 27.4 percent of non-minority-owned establishments expanded. At the same time, 34 percent of Hispanic-owned establishments expanded, 32.1 percent of Asian and Pacific Islander-owned establishments expanded, 27.8 percent of American Indian and Native Alaskan-owned establishments expanded, and 25.7 percent of Black-owned establishments expanded.

• The four-year survival rate for non-minority-owned business establishments was 72.6 percent. The survival rates for minority-owned businesses were lower, including Asian and Pacific Islander-owned at 72.1 percent, Hispanic-owned at 68.6 percent, American Indian and Native Alaskan-owned at 67 percent, and Black-owned at 61 percent.

• States with the highest survival rates for minority-owned businesses during 1997-2001 were Delaware for American Indian and Native Alaskan-owned establishments (93.8 percent), Wyoming for Black-owned establishments (93.5 percent), South Carolina for Hispanic-owned establishments (88.6 percent), and New Mexico for Asian and Pacific Islander-owned establishments (84.6 percent).

Special tabulations tracking a subset of the 1997 Survey of Minority-Owned Businesses by the Census Bureau, with funding from the Office of Advocacy, provided data for the report. While comprehensive, the dataset tracks only businesses that were in existence in 1997, and does not include the 2 million new businesses that started in 1997-2001 period, nor the jobs they created.

The complete report, *Dynamics of Minority-Owned Employer Establishments, 1997-2001*, is available on Advocacy's website at *www.sba.gov/advo/research/rs251tot.pdf*.

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