

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

In the Matter of	)	
	)	
Wireline Competition Bureau Seeks	)	GN Dkt. No. 10-188
Comment on Business Broadband	)	
Marketplace	)	DA No. 10-1743
	)	

**COMMENTS OF THE  
OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION**

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits these comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the above-referenced request for comments on the business broadband marketplace. Advocacy commends the Commission for beginning its work toward ensuring competition in the broadband marketplace. As the Commission continues to work toward achieving its broadband deployment goals, Advocacy urges the Commission to examine the vital role that small broadband providers play in creating a robust, competitive market for broadband services. Advocacy believes that it is crucial for the Commission adopt policies that maximize the nation’s existing network infrastructure and encourage further innovation and investment in broadband infrastructure and services. Small broadband providers will be an indispensable resource to that end.

**About the Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the

Regulatory Flexibility Act (“RFA”) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is not lost within the regulatory process.<sup>1</sup> Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.<sup>2</sup> In addition, the RFA’s purpose is to address the adverse effect that “differences in the scale and resources of regulated entities” has had on competition in the marketplace.<sup>3</sup>

### **Introduction and Summary**

Ensuring that there is adequate competition in the broadband market is essential for providing consumers, especially small business consumers, with access to affordable, reliable broadband. In its recently published Sixth Broadband Deployment Report, the Commission concluded that broadband is not being deployed in a reasonable and timely fashion.<sup>4</sup> Under section 706 of the Telecommunications Act of 1996, the Commission must “take immediate action to accelerate deployment capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market” if broadband is not deployed in a reasonable and timely fashion.<sup>5</sup> Indeed, in its report, the Commission stated that the 14 to 42 million Americans without broadband access will not gain such access without changes in policy.<sup>6</sup>

A lack of competition, specifically in non-urban markets, may be one explanation for the unsatisfactory pace of broadband deployment. In 2008, Congress requested that Advocacy

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<sup>1</sup> Pub. No. 96-354, 94 Stat. 1164 (1980).

<sup>2</sup> Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

<sup>3</sup> Pub. L. 96-354, Findings and Purposes, Sec. 4, 126 Cong. Rec. S299 (1980).

<sup>4</sup> *Sixth Broadband Deployment Report*, GN Docket No. 09-137 (July 20, 2010).

<sup>5</sup> 47 U.S.C. § 1302(b).

<sup>6</sup> *Supra* note 4.

conduct a study examining the availability of broadband services to small businesses.<sup>7</sup> Advocacy will be releasing the study later this month and would welcome an opportunity to present the study's findings to the Commission in the near future. Some preliminary findings highlight the rural-urban divide in broadband services. The study concludes that rural small businesses pay more and receive lower quality services than their urban counterparts. The study also highlights the lack of choices available to rural small business customers.

In order to meet its broadband deployment goals, Advocacy believes that the Commission should focus on policies to ensure there is a level playing field for competition in every broadband technology sector. On October 5, 2010, Advocacy hosted a roundtable with a number of individuals representing small broadband providers who use a variety of technologies to provide quality broadband services at competitive prices. No matter the broadband transmission technology used by these small companies, all participants expressed concerns regarding barriers to greater market participation for their firms. Opening the markets to further small business participation can provide the competition necessary for successful universal broadband deployment. Advocacy urges the Commission to act quickly and decisively to enact policies that will engender further competition overall, and ultimately provide consumers with greater access to affordable broadband. Some of the specific challenges faced by small broadband providers are discussed in detail below.

### **Barriers to Competition in the Broadband Market**

There are significant barriers to entry into the broadband market for small providers in all sectors of the broadband market. The following comments highlight the concerns raised at Advocacy's October 5 roundtable by small wireline, wireless, and cable broadband providers. Specifically, roundtable participants expressed concerns about (1) availability and affordability

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<sup>7</sup> Public Law 110.385 Section 105.

of middle mile access for wired and wireless broadband providers, (2) copper retirement and access to last mile facilities, (3) wireless spectrum access and device interoperability, and (4) pole attachment reforms. Many of the issues discussed below are already the subject of several FCC dockets and Advocacy urges that the Commission move forward toward rulemaking on those dockets.

### **1. Availability and Affordability of Middle Mile Access**

Roundtable participants expressed concerns that it is often the case that middle-mile facilities have insufficient capacity to deliver high-speed services to business broadband consumers. Recent programs under the Rural Utilities Service (RUS) Broadband Infrastructure Program (BIP) and the National Telecommunications and Information Administration (NTIA) Broadband Technologies Opportunities Program (BTOP) were developed with the intent to build middle mile infrastructure for rural areas with insufficient access. One rural wireless broadband provider who participated in Advocacy's roundtable expressed concerns that grant beneficiaries are not providing access to the infrastructure funded by these programs, as required by the nondiscrimination and interconnection obligations set forth in the Notice of Funds Availability for these programs.<sup>8</sup> Advocacy encourages the Commission to be vigilant in its oversight of this issue and continue its work with NTIA and RUS to ensure that middle mile infrastructure built using BTOP and BIP funds provide rural consumers with adequate access to affordable broadband.

Additionally, roundtable participants expressed concerns that even where adequate middle-mile facilities exist, access to middle mile infrastructure is prohibitively expensive. As stated in the public notice for this docket, the Commission is already engaged in a parallel proceeding on

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<sup>8</sup> *Broadband Initiative Program, Broadband Technologies Opportunity Program, Notice of Funds Availability and Solicitation of Applications, "Non-discrimination and Interconnection Obligations"*, 74 *Fed. Reg.* 33104 at 33110 (July 9, 2009).

special access reform.<sup>9</sup> The Commission's special access policies have implications for competition in both wireline and wireless broadband providers. Advocacy submitted comments to the FCC in 2007 encouraging the commission to conduct a complete analysis of the current market conditions and examine how improvements to the special access rules could reduce burdens on small carriers and better assist the Commission in fulfilling its broadband deployment goals.<sup>10</sup> Participants in Advocacy's October 5, 2010, roundtable repeated their concerns that the Commission's pricing flexibility rules are contributing to a decline in competition because of increased rates for special access.<sup>11</sup> Advocacy urges the Commission to continue to examine its extensive docket on special access and adopt policies that will encourage further competition and access to broadband for small businesses.

## **2. Copper Retirement and Access to Last Mile Facilities**

Affordable access to legacy copper networks and other last mile facilities is crucial for small broadband providers who wish to compete with incumbent providers. Several CLECs that participated in Advocacy's roundtable expressed concerns regarding the Commission's current copper retirement rules. Many small carriers rely exclusively on legacy copper networks to offer a variety of affordable services to small business broadband consumers that would not otherwise be available to them, particularly in non-urban areas. Roundtable participants stated that the Commission's current rules do not provide adequate means for a small carrier to object to an

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<sup>9</sup> *Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the Special Access NPRM*, WC Docket No. 05-25, RM 10593, Public Notice, 23 FCC Rcd 13638 (2009) (seeking comment on appropriate framework for examining various issues raised in the *Special Access NPRM*).

<sup>10</sup> *Comments of the Office of Advocacy, U.S. Small Business Administration, Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (August 8, 2007).

<sup>11</sup> Two CLECs present at Advocacy's roundtable, C-Beyond and XO Communications, have both submitted multiple filings in the special access docket. Additionally, COMPTTEL, a trade association representing a number of small competitive broadband providers has made multiple filings on the matter. Advocacy encourages the FCC to carefully consider their comments as it moves forward with special access.

incumbent carrier's termination of service.<sup>12</sup> Additionally, because the Commission's current rules allow incumbent carriers to deny small businesses access to their fiber networks, these small businesses cannot provide broadband services in areas where copper networks have been retired. Because, duplicating existing network infrastructure is not economically feasible or efficient, roundtable participants stressed that competitive providers must be able to lease access to last-mile facilities from incumbent carriers at reasonable wholesale rates to promote retail competition.

Given the Commission's obligation to ensure that consumers in non-urban areas have access to affordable broadband, Advocacy believes that it is important for the Commission to carefully examine how the pace of copper retirement and the ability of competitive providers to purchase access to last-mile facilities are affecting small carriers' ability to compete and offer services to underserved areas. Advocacy also encourages the Commission to seek public comment on its copper retirement policies to determine what steps might be necessary to ensure that competitive carriers are not unduly disadvantaged by the current regime, and that valuable copper networks that could be utilized to provide broadband to underserved areas do not go to waste.<sup>13</sup>

### **3. Wireless Spectrum Access and Device Interoperability**

Small wireless broadband providers face significant hurdles in the current marketplace. In addition to the middle mile access issues discussed above, small wireless providers must contend with limited access to wireless broadband spectrum. Wireless broadband has become increasingly important to small business consumers that need mobile broadband access for a

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<sup>12</sup> See 47 C.F.R. § 51. Under section 51 ILECs are only required to state their intent to retire a copper loop and CLECs have a very limited window of time in which to object.

<sup>13</sup> On May 10, 2007, Advocacy filed a letter with the Commission in response to the increase in copper retirement petitions. Advocacy urged the Commission to open a rulemaking on copper retirement to provide small businesses with a clear channel in which they can voice their concerns on this issue. A complete copy of Advocacy's letter may be accessed at: <http://www.sba.gov/advo/laws/comments/>.

variety of applications. Roundtable participants stressed that increased small carrier participation in the wireless provider market is essential to greater wireless broadband deployment because small wireless carriers often serve small business consumers in rural areas that do not have adequate broadband access.

Roundtable participants also stressed that the Commission's current lack of rules regarding device interoperability across the recently auctioned 700MHz block may make it increasingly difficult for small carriers to compete in the wireless market. Small wireless carriers have significant concerns regarding whether or not newly developed 4G technologies will be interoperable across all frequencies in the 700MHz zone. Advocacy encourages the Commission to examine the impact that a lack of frequency interoperability would have on small competitive carriers of wireless broadband and on wireless competition in general. Small wireless carriers have submitted a petition for rulemaking on this matter and have made arguments that approving the use of devices that do not work across all 700MHz bands could stifle adoption of new and vital broadband technologies for underserved populations that rely upon small wireless carriers.<sup>14</sup> Advocacy encourages the Commission to consider the issues at play and move forward with rulemaking if it finds that that these issues present significant barriers to entry in the market for small wireless carriers, and that there are feasible solutions with regard to device interoperability across all 700MHz bands.

#### **4. Pole Attachment Reforms**

Fair access to utility poles and reasonable attachment rates are crucial for small broadband providers in rural and suburban areas. Participants in Advocacy's roundtable that represent small

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<sup>14</sup> See *Wireless Telecommunications Bureau Seeks comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, Public Notice, DA 10-278, 75 Fed. Reg. 9210 (rel. Feb. 18, 2010). See also *Petition for Rulemaking of the 700 MHz Block A Good Faith Purchasers Alliance*, RM-11592 (filed Sept. 29, 2009) (Alliance Petition).

broadband providers expressed their support for many of the reforms proposed in the Commission's recent NPRM regarding pole attachments. Specifically, small broadband providers have stated their support for the Commission's proposal to establish a predictable, reasonable make-ready timeline for pole attachments.<sup>15</sup>

While small broadband providers are generally supportive of the Commission's proposed pole attachment reforms, small cable broadband providers are concerned about possible increases in rates for comingled Internet and video services. Small cable broadband providers that operate in rural areas explained in filings for the Commission's related NPRM that they require access to a higher number of utility poles to serve a lower number of customers than their non-rural counterparts because their customers are spread over wider geographic areas.<sup>16</sup> A rate increase could burden rural cable broadband providers and consumers. Advocacy encourages the Commission to examine the impact that increasing pole attachment rates for small cable broadband providers of comingled video and broadband services would have on these providers' ability to compete and deploy broadband, especially in underserved areas.

### **Conclusion**

Advocacy applauds the Commission for its efforts to understand the issues that may be inhibiting affordable broadband availability for business consumers. Advocacy's soon-to-be released study will provide some answers with regard to the menu of choices available to small business broadband consumers, and we look forward to sharing those findings with the Commission. Because small business consumers have fewer affordable broadband service

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<sup>15</sup> See *Reply Comments of The National Telecommunications Cooperative Association In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, October 4, 2010, WC-Docket 07-245, GN Docket 09-5; See also *Id.*, *Comments of the American Cable Association*, August 16, 2010.

<sup>16</sup> See *Id.*, *Comments of the American Cable Association*, August 16, 2010.

choices than their larger counterparts, Advocacy encourages the Commission to examine whether a lack of competition in the broadband markets is responsible for this shortfall.

A number of issues may be contributing to a lack of competition in the broadband markets, notably (1) affordable access to middle mile infrastructure, (2) copper retirement and access to last mile facilities (3) wireless spectrum access and device interoperability, and (4) pole attachment reform. The Commission has received significant filings from the public with regard to all of these issues and Advocacy believes that the Commission should act quickly to address the concerns of small broadband providers with regard to their ability to provide consumers with greater access to affordable, reliable broadband.

Advocacy is pleased to forward the comments and concerns of small broadband providers to the Commission and Advocacy is available to assist the Commission in its outreach to small broadband providers. For additional information or assistance please contact me or Jamie Belcore Saloom of my staff at (202) 205-6890 or [Jamie.Belcore@sba.gov](mailto:Jamie.Belcore@sba.gov).

Respectfully submitted,

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*Via electronic filing*

## Certificate of Service

I, Jamie Belcore Saloom, an attorney with the Office of Advocacy, U.S. Small Business Administration, certify that I have, on this October 15, 2010, caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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