

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

In the Matter of)	
)	
Promoting Interoperability in the 700 MHz Commercial Spectrum)	WT Docket No. 12-69
)	
Wireline Competition Bureau Seeks Comment on Business Broadband Marketplace)	WC Docket No. 10-188
)	
Special Access Rates for Price Cap Local Exchange Carriers)	WC Docket No. 5-25
)	
Petitions for Rulemaking and Clarification Regarding the Commission’s Rules Applicable to Retirement of Copper Loops and Copper Subloops)	RM - 11358
)	
A National Broadband Plan for our Future)	GN Docket No. 09-51

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) in response to the above-referenced notice of proposed rulemaking regarding mobile device interoperability in the lower 700MHz bands. Advocacy encourages the FCC to move forward in its work to address issues raised in its business broadband docket, referenced above, that will promote competition in the wider broadband market—particularly special access and copper retirement.

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 come from input received from outreach to small businesses and 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.¹ Congress crafted the RFA to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or to comply with federal laws.² In addition, the RFA’s purpose is to address the

¹ Pub. No. 96-354, 94 Stat. 1164 (1980).

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

adverse effect that “differences in the scale and resources of regulated entities” has had on competition in the marketplace.³

I. 700 MHz Interoperability

As part of Advocacy’s research mission and congressional request, Advocacy released a study titled “The Impact of Broadband Speed and Price on Small Businesses” in 2011.⁴ The study underscores the importance of a competitive broadband marketplace to the nation’s small businesses. Given the small businesses imperative for access to affordable, high quality broadband services, Advocacy encourages the FCC to adopt and enforce policies that ensure robust competition in every broadband technology sector. Mobile broadband in particular has become increasingly important to small business consumers that need access to a variety of innovative mobile broadband applications—especially in rural communities. Competitive wireless carriers provide those services and create thousands of jobs in rural communities when they build and maintain networks. Advocacy supports FCC policies that foster a competitive wireless market that can deploy the latest and most advanced technologies to serve these communities and the businesses within them.

On October 15, 2010, Advocacy forwarded the concerns of small broadband providers with regard to competition in the business broadband marketplace in a comment letter to the FCC.⁵ Among other issues, our comments highlighted the concerns of competitive wireless carriers regarding the lack of rules mandating device interoperability across the 700 MHz band. At the time, competitive wireless carriers had significant concerns regarding whether or not newly developed 4G technologies would be available to their consumers without an interoperability mandate from the FCC. An alliance of competitive wireless carriers submitted a

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

⁴ Available at <http://www.sba.gov/advocacy/7540/12828>.

⁵ See *Comments of the Office of Advocacy, U.S. Small Business Administration*, GN 10-188 (filed October 15, 2010).

petition for rulemaking on this matter and argued that the lack of 700 MHz interoperability could stifle adoption of new and vital broadband technologies for underserved populations that rely upon small wireless carriers.⁶ Advocacy encouraged the Commission to consider the issues presented in the petition and move forward with rulemaking if it found that there were technologically feasible solutions with regard to device interoperability across the 700MHz band.⁷

In the year and a half following Advocacy's comments and the competitive carriers' petition for rulemaking, no industry solution to the interoperability issue has been achieved. While Advocacy commends the work the FCC has done to promote wireless competition over the past year, including its data roaming order⁸, Advocacy has heard concerns from small businesses that the lack of 700 MHz interoperability is having widespread negative impacts on competitive carriers and the small businesses they serve. This issue may be undermining the FCC's efforts to promote wireless competition. In light of the small business interests at stake, Advocacy supports the FCC's decision to adopt this notice of proposed rulemaking and encourages the FCC to move forward with final rules mandating interoperability if an industry solution does not present itself in the immediate future.

Small carriers have again reached out to Advocacy to ask for our support of the petition for 700 MHz interoperability rulemaking and to inform us of the impact the lack of 700 MHz interoperability has had on their ability to utilize their 700MHz spectrum and build competitive

⁶ *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).

⁷ *Supra* note 5.

⁸ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 22 FCC Rcd 5411 (2011).

networks. The Rural Cellular Association (RCA) has submitted numerous comments to the FCC on this issue and has also met with Advocacy to discuss the impact the lack of 700 MHz interoperability is having on its members. In comments to the FCC, RCA has proposed that the FCC require all wireless licensees operating in the Lower 700 MHz band to conduct their operations in a manner that ensures interoperability, such as requiring licensees in the A, B, & C Blocks to employ only devices that operate in Band Class 12.⁹ U.S. Cellular, a competitive wireless carrier, recently commented that it has engaged with AT&T and Verizon regarding voluntary industry efforts to resolve lower 700 MHz interoperability but remained concerned that there would not be an industry solution within a reasonable timeframe without regulatory intervention.¹⁰ Additionally, both RCA and U.S. Cellular have indicated that possible interference claims which would make 700 MHz interoperability technologically infeasible have never been substantiated and should not prevent the FCC from moving forward with a final rule.¹¹ Advocacy recommends that the FCC adopt the RCA proposal referenced above if the record supports the assertions of commenters regarding the technological feasibility of interoperability in the lower 700MHz bands as well as the improbability that industry will not reach a voluntary solution by the end of 2012. Until this issue is resolved, valuable spectrum that could be used to create jobs and foster innovation will continue to be underutilized.

II. Other Small Business Broadband Market Concerns

Broadband remains an indispensable input for growing businesses. Advocacy continues to believe that preserving and promoting competition in the business broadband market is essential in order to provide small businesses with affordable access and choice regarding the

⁹ *Notice of Ex Parte Meeting*, Rural Cellular Association, WT 12-69 (May 3, 2012).

¹⁰ *Notice of Ex Parte meeting*, United States Cellular Corporation, WT 12-69 (May 9, 2012).

¹¹ *Supra* notes 9-10.

services they need to grow and create new jobs. Competitive carriers across various technologies may face a number of barriers to entry in the business broadband market that may require FCC action. Advocacy has written to the FCC on these issues in the past; namely, special access and copper retirement.¹²

Advocacy has spoken with competitive carriers who hope that the FCC will move forward on both of the above issues in the near future, and believe the FCC's special access docket requires particularly urgent attention. Members of Congress have also expressed their desire for the FCC to move forward with its special access proceeding expeditiously, stressing that addressing special access issues would "fulfill a key obligation of the National Broadband Plan" and could "generate billions of cost-savings for companies across the country, increasing innovation and investment, enhancing rural broadband deployment, and improving wireless coverage" for consumers.¹³ Very recently, competitive carriers petitioned the FCC to suspend and investigate a proposal by Verizon that would have increased certain special access rates for the second time in a year.¹⁴ Verizon ultimately withdrew its proposal; however, this latest scuffle underscores the FCC's need to move quickly to complete review of its special access policies. New entrants to the business broadband market may be deterred from entering because they believe the FCC has not adequately addressed issues regarding reasonable rates, terms, and conditions for special access. After speaking with competitive carriers, Advocacy remains concerned that the current special access rules may be resulting in higher costs and lower quality service for business broadband consumers who could be using those extra resources to grow their

¹² *Supra* note 5.

¹³ *Letter from Congresswoman Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology, to Chairman Genachowski, Federal Communications Commission* (May 15, 2012).

¹⁴ *See In the Matter of Verizon Telephone Companies*, Tarriff FCC 1, 11, and 14, Transmittal Number 1187; *See Petition of TW Telecom and Windstream to Suspend and Investigate*, see also *Petition of XO Communications to Suspend and Investigate*.

businesses and hire more employees. Advocacy encourages the FCC to continue to examine the growing concerns regarding special access that have been raised by competitive carriers and move forward with rulemaking to address those concerns if necessary.

Finally, Advocacy reiterates the concerns expressed by small businesses in our October 2010 comments regarding legacy copper network retirement and the negative impact it can have on consumers when carried out without proper consideration for the consumer interests at stake. Legacy copper networks are a vital piece of our national infrastructure, and consumers overwhelmingly rely on those last-mile copper networks to receive high-speed broadband services. In conversations with Advocacy, competitive carriers have shared their experiences regarding instances where the lack of transparency and thoughtful planning in the process of copper retirement has impeded their ability to provide essential broadband services to their customers. Advocacy encourages the FCC to engage with competitive and incumbent carriers to determine what can be done to fix some of these issues in a way that allows incumbent carriers to retire unused copper without harming consumers, many of which are small businesses.

III. Conclusion

Competition in the business broadband market is essential for the provision of affordable broadband choices for U.S. small businesses. Identifying and removing barriers to entry for competitive carriers in all broadband markets is of utmost importance. Advocacy applauds the FCC's move to adopt a notice of proposed rulemaking on handset interoperability and believes that the FCC should move forward with final rules if an industry solution to this issue is not reached in the near future. Advocacy also encourages the FCC to move forward on other items raised in its business broadband marketplace docket, particularly special access and copper

retirement. For additional information or assistance please contact me or Jamie Belcore Saloom at (202) 205-6890 or Jamie.Belcore@sba.gov.

Respectfully submitted,



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