

September 8, 2015

*Via Electronic Filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: *Reply Comments*  
Protecting and Promoting the Open Internet, GN Docket No. 14-28**

Dear Ms. Dortch:

The Office of Advocacy (Advocacy) respectfully submits these comments to the Federal Communications Commission (FCC) regarding the small business exemption from enhanced transparency requirements adopted in the *2015 Open Internet Order*.<sup>1</sup> Advocacy commends the FCC for acknowledging the disproportionate compliance burden that small broadband providers face under the rules, and encourages the FCC to continue to exempt small businesses from the requirements. Advocacy also encourages the FCC to use existing Small Business Administration (SBA) size-standards to determine the appropriate small business threshold for the exemption.

### **About the Office of Advocacy**

Congress established 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 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 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>2</sup> 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.<sup>3</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>4</sup>

### **Background**

In a letter to the FCC last year, Advocacy encouraged the FCC to balance its approach to maintaining the Open Internet with its obligations to work diligently to protect and foster

<sup>1</sup> See *Protecting and Promoting the Open Internet*, GN Docket No. 14.28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, paras. 154-181 (rel. March 13, 2015) (*2015 Open Internet Order*).

<sup>2</sup> Regulatory Flexibility Act, Pub. No. 96-354, 94 Stat. 1164 (1980).

<sup>3</sup> *Id.*, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

<sup>4</sup> *Id.*, Findings and Purposes, Sec. 4, 126 Cong. Rec. S299 (1980).

competition in the service of broadband.<sup>5</sup> Advocacy noted that consumers benefit from both goals, and encouraged the FCC to engage with small businesses to find a way forward.<sup>6</sup> During the public comment period for the *2015 Open Internet Order*, many stakeholders raised concerns regarding the disproportionate impact that the FCC's proposals would have on small broadband providers. Because of those concerns, the FCC temporarily exempted small broadband providers with 100,000 or fewer broadband connections from certain enhancements of the FCC's existing transparency rules that govern the content and format of disclosures made by providers of broadband Internet access service.<sup>7</sup> The FCC also directed the Consumer and Governmental Affairs Bureau to seek comment on questions regarding continued implementation of the exemption.<sup>8</sup> On June 22, 2015, the Consumer and Governmental Affairs Bureau released a notice seeking comment on the exemption.<sup>9</sup>

Small business stakeholders have submitted comments to the FCC, asking the FCC to maintain the exemption<sup>10</sup> and in some cases expand the exemption to cover additional small broadband providers.<sup>11</sup> They have argued that their compliance with the provisions will yield little consumer benefit, but impose more significant costs than the FCC has estimated.<sup>12</sup> Stakeholders have explained that the rules will have disproportionately larger impacts on small businesses because they will have to develop new systems, software and procedures to capture and analyze the information associated with the regulations.<sup>13</sup> Commenters have also noted that the FCC has not specifically indicated how often providers make the customer disclosures required by the regulations, injecting further uncertainty into the cost of compliance for small entities.<sup>14</sup> Finally, small business stakeholders have raised concerns about the FCC's decision to exempt only providers with fewer than 100,000 subscribers in lieu of using the SBA approved size standard for small telecommunications carriers.<sup>15</sup>

### Advocacy's Comments

Advocacy encourages the FCC to continue to exempt small broadband providers from the enhanced transparency requirements set forth in the *2015 Open Internet Order*. Small businesses typically are unable to absorb increased operating costs to the same extent as larger business, and this is one of the chief reasons that the RFA requires agencies to examine alternatives to reduce

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<sup>5</sup> *Ex Parte* letter from the Small Business Administration Office of Advocacy, GN Docket No. 14-28 (filed September 25, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> *Supra* note 1

<sup>8</sup> *See id.*

<sup>9</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements, Public Notice, 30 FCC Rcd. 6409 (2015) (Public Notice).*

<sup>10</sup> *See e.g.* Comments of The United States Telecom Association, GN Docket No. 14-28 (2015); comments of the American Cable Association, GN Docket No. 14-28 (2015); comments of The Small Rural Carriers coalition, GN Docket No. 14-28 (2015); comments of the Rural Broadband Provider Coalition, GN Docket No. 14-28 (2015).

<sup>11</sup> *See* Comments of CTIA-The Wireless Association, GN Docket No. 14-28 (2015); *see also*, Reply Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28 (2015).

<sup>12</sup> *Supra* note 10.

<sup>13</sup> *See* USTelecom comments, *supra* note 10.

<sup>14</sup> *See id.*

<sup>15</sup> *Supra* note 11.

disproportionate regulatory impacts on small entities.<sup>16</sup> Before requiring small broadband providers to comply with the enhanced transparency requirements in the 2015 Open Internet Order, it should first attempt to mitigate the cost of compliance for small entities and determine whether such costs are justified in light of consumer benefits. The FCC should also follow the SBA procedures for determining the appropriate threshold to use when determining eligibility for the exemption.

Advocacy has concerns that compliance with the enhanced transparency requirements under the *2015 Open Internet Order* is not feasible for small broadband providers, particularly small rural providers, and may ultimately degrade the quality of service that consumers receive from small providers.<sup>17</sup> For many small broadband providers, compliance could divert significant resources away from network development and customer service; this diversion may harm consumers if the regulations do not offer equally significant consumer benefits. Small broadband providers are largely in compliance with the FCC's 2010 transparency and disclosure rules, and it is unclear whether the enhanced requirements set forth in the *2015 Open Internet Order* will provide incremental benefits outweighing the potential harm to consumers served by small providers. Advocacy encourages the FCC to permanently exempt small businesses from its enhanced transparency requirements permanently, unless the cost of small business compliance with the requirements can be mitigated. Advocacy notes that small business stakeholders have expressed their willingness to work with the FCC to reduce such costs.<sup>18</sup>

Advocacy also notes that the size threshold the FCC has applied with regard to the small business exemption from its enhanced transparency requirements is significantly smaller than the existing SBA definition for telecommunications carriers. The FCC is required to obtain approval from the Small Business Administration when it opts to use a small business size standard that is different from SBA's for regulatory enforcement purposes.<sup>19</sup> The FCC has not consulted with SBA or obtained approval to use its alternative threshold. Advocacy recommends that the FCC follow SBA's procedures to determine the appropriate threshold in light of relevant data, and request public comments on that determination. Until the FCC has consulted and obtained approval for an alternative size standard, the FCC should adopt a threshold for the exemption that utilizes existing SBA small business size standards.

## **Conclusion**

Advocacy is pleased to forward the concerns of small broadband providers to the FCC, and applauds the FCC's efforts to provide regulatory flexibility for small businesses. To avoid encumbering small businesses with significantly disproportionate compliance costs, the FCC should exempt small businesses that meet the relevant SBA size standards from compliance with the enhanced transparency requirements under its *2015 Open Internet Order*. The record shows broad support for such a decision.

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<sup>16</sup> *Supra* note 2.

<sup>17</sup> Small Rural Carriers comments, *supra* note 10.

<sup>18</sup> American Cable Association comments, *supra* note 10.

<sup>19</sup> 13 CFR §121.903 (2015); *See also* 15 U.S.C. § 632(a)(2)(c) (2015).

Advocacy looks forward to assisting the FCC in its engagement with small businesses. Please do not hesitate to contact me or Jamie Saloom at 202-205-6533 should you require our office's assistance.

Best regards,

Handwritten signature of Claudia R. Rodgers in blue ink.

Claudia R. Rodgers  
Acting Chief Counsel for Advocacy

Handwritten signature of Jamie Belcore Saloom in blue ink.

Jamie Belcore Saloom  
Assistant Chief Counsel for Telecommunications