Office of Advocacy
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Advocacy: the voice of small business in government

Office of Advocacy
U.S. Small Business Administration
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Washington, DC 20416

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Via Electronic Filing

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, DC 20554

Re: In the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45; In the Matter of IP-Enabled Services (WC Docket No. 04-36).

Pursuant to Section 1.203(a)(4) of the Federal Communications Commission's ("FCC" or "Commission") rules, which exempts agencies of the Federal Government which share jurisdiction with the Commission from exclusion under the FCC's Sunshine period probation, the Office of Advocacy of the U.S. Small Business Administration ("Advocacy") submits this letter in the above-captioned proceedings to urge the FCC to conduct an initial regulatory flexibility analysis ("IRFA") before it adopts a rule changing the safe harbor percentage for small wireless carriers and imposing Universal Service obligations on Voice over Internet Protocol ("VoIP") providers.

Congress established Advocacy in 1976 under Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for the receipt of complaints concerning the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.[1] Advocacy also has a statutory duty to monitor and report to Congress on Federal agency compliance with the Regulatory Flexibility

[1] 15 U.S.C. § 634(c)(1)-(4).

Act of 1980 ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").[2] Advocacy is an independent office within the U.S. Small Business Administration ("SBA"), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

On August 13, 2002, President George W. Bush signed Executive Order 13272 requiring federal agencies to implement policies protecting small entities when writing new rules and regulations.[3] This Executive Order highlights the President's goal of giving small business owners a voice in the complex and confusing federal regulatory process by directing agencies to work closely with the Office of Advocacy and consider properly the impact of their regulations on small entities. Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.[4]

The FCC appears to be considering a final rule based on the proposed rule issued for IP-Enabled Services in March 2004.[5] This proposal asked broad questions about whether IP-Enabled Services (such as VoIP) should be regulated and whether they should contribute to Universal Service. The proposed rule did not propose any specific regulations and the IRFA released with the proposal reflected this lack of specificity. In the section of the IRFA that described the projected compliance requirements, the FCC stated "None at this time."[6] The section of the IRFA that described significant alternatives echoed the inquiry nature of the proposed rule and stated "The Notice makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities."[7]

In our opinion, the FCC has not analyzed the economic impacts on small businesses of increasing the safe harbor percentage or imposing Universal Service obligations on VoIP providers. We therefore recommend that the FCC postpone adopting a final rule on this issue until it has had an opportunity to complete an IRFA that meets the requirements of the RFA. Doing so will bring the FCC into compliance with the RFA and will afford the Commission the opportunity to legitimately solicit input from small businesses on the regulatory costs of compliance as well as garner

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[2] Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).
[3] Exec. Order. No. 13272 at § 1, 67 Fed. Reg. 53,461 (2002).
[4] *Id.* at § 3(c).
[5] In the Matter of IP-Enabled Services, *Notice of Proposed Rulemaking*, WC Dkt. 04-36, FCC 04-28 (rel. March 10, 2004).
[6] *Id.* at Appendix A, para. 72.
[7] *Id.* at Appendix A, para. 74.

recommendations for significant alternatives that would minimize the impact on small businesses.

The Office of Advocacy is available to assist the Commission in its efforts, such as reaching out to small businesses and gathering compliance cost information. Please contact me or Eric Menge of my staff at (202) 205-6533 or eric.menge@sba.gov if we can be of assistance.

Sincerely,

/s/ _____
Thomas M. Sullivan
Chief Counsel for Advocacy

/s/ _____
Eric E. Menge
Assistant Chief Counsel for Telecommunications

cc:
FCC Commissioner Kathleen Q. Abernathy
FCC Commissioner Michael J. Copps
FCC Commissioner Jonathan Adelstein
FCC Commissioner Robert McDowell
Steven D. Aitken, Acting Administrator, Office of Information and Regulatory Affairs