

**Before The
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Possible Revision or Elimination of) CB Docket No. 09-102
Rules Under The Regulatory Flexibility)
Act, 5 U.S.C. 610)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

The Federal Communications Commission (“FCC” or “Commission”) has sought comment on the rules the Commission has chosen for review pursuant to 5 U.S.C. § 610 (the “Regulatory Flexibility Act” or “RFA”). The chosen rules are those “adopted by the agency in calendar year 1998 which have, or might have, a significant economic impact on a substantial number of small entities.”¹ The RFA requires the Commission to “determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of section 610 of the RFA, to minimize any significant economic impact of such rules upon a substantial number of small entities.”²

The National Association of State Utility Consumer Advocates (“NASUCA”)³

¹ Public Notice DA 09-1307 (rel. June 24, 2009) at 1. (The Public Notice does not contain any provision for reply comment.)

² Id.

³ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

provides the following comments⁴:

As we understand it, the purpose here is to minimize the impact on small companies that occurs *specifically because they are small companies*. Thus no action is needed merely because any rule likely impacts a smaller carrier more than a large carrier. The large carrier has a scope of activity that allows all costs – regulatory and otherwise – to be distributed more broadly. If that were the end-point of the analysis, then all rules would have to be eliminated, because they likely have greater impact on small companies.

So the real question is whether the rule impacts a small company **disproportionately** to the benefit the rule brings to the public, including customers of the small company (who may be small companies themselves,⁵ or may be residential customers). In that regard, many of the rules set out in the Public Notice need to be changed, *but not because of their impact on small companies*.⁶ And there are other rules that must be retained, despite their impact on those small companies.⁷ Thus, overall, NASUCA would not propose any changes to the rules set out in the Public Notice in this context.

That said, we would note an irony in the Public Notice. If the Commission’s true purpose is “to minimize any significant economic impact” on the small companies, that impact should be considered not only in terms of minimizing costs imposed on the small companies, but also in terms of minimizing the significant **benefits** that are conferred on

⁴ These comments address rules in Parts 52, 54, and 64.

⁵ Likewise, competitors of small companies may also be small companies themselves.

⁶ E.g., Part 54 (universal service).

⁷ E.g., Part 52, Subparts C (number portability) and D (toll free numbers), Part 64, § 64.703(a)(4) (customer information).

the small companies, most particularly from the federal universal service fund. Support for small companies should be provided only where it can be shown that the support is needed to ensure reasonably comparable service at reasonably comparable rates.

Respectfully submitted,

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

/s/

David C. Bergmann
Chair, NASUCA Telecommunications
Committee
Assistant Consumers' Counsel
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574
bergmann@occ.state.oh.us

September 8, 2009