



August 1, 2018

VIA ELECTRONIC SUBMISSION

Marlene S. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW Washington, DC 20554

Re: Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision, CG Docket Nos. 18-152, 02-278; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258; Petition of USTelecom For Forbearance Pursuant To 47 U.S.C. § 160 To Accelerate Investment In Broadband And Next Generation Networks, WC Docket 18-141.

Dear Ms. Dortch:

On July 30, 2018, Jamie Saloom, Assistant Chief Counsel for the U.S. Small Business Administration's Office of Advocacy (Advocacy), Charles Maresca, Director of Interagency Affairs for Advocacy, and Jordan Arnold, Economic Research Intern for Advocacy, met with the following staff from the Office of Federal Communications Commission (FCC) Chairman Ajit Pai: Matthew Barry, Nicholas Degani, and Zenji Nakasawa. The purpose of the meeting was to discuss issues identified by Advocacy as regulatory reform priorities for small businesses.

Communications between the Office of Advocacy and FCC officials on regulatory matters impacting small businesses are exempt from disclosure under § 1.1204 (a)(5) of the FCC's *ex parte rules*; however, Advocacy is submitting a summary of this meeting for the public record in the above-referenced dockets.¹

¹ See 47 C. F. R. §§ 1.1200 – 1.1216, at §1.1204(a)(5).



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 Small Business Administration (SBA), and 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 mandate 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.² 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.³ 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.⁴

Summary of July 30, 2018 Meeting Between Advocacy and FCC Staff

Over the past 12 months, the Office of Advocacy has been conducting significant outreach with small businesses around the country to identify regulations that are in need of reform, as well as any new regulatory approaches that may unduly disadvantage small businesses. A number of issues under the FCC's jurisdiction have been brought to Advocacy's attention through these recent outreach efforts. In the July 30th meeting referenced above, Advocacy forwarded the concerns of small businesses on the following topics.

Definitions and Regulations under the Telecommunications Consumer Protection Act (TCPA)⁵

Advocacy has had a number of conversations with small credit unions, financial service providers, healthcare service providers, and banks regarding their concerns about TCPA compliance. Recent litigation has created uncertainty over what types of technology can be used to contact customers without running afoul of the TCPA. Small businesses have asked Advocacy to urge the FCC to issue an interpretation of the term "autodialer" in light of the recent D.C. Circuit case striking the FCC's 2015 interpretation⁶, adopt safe-harbors for businesses that utilize a reassigned numbers database, and interpret the term "called party" as the intended or expected recipient of a call. Many of the businesses that have contacted Advocacy are required by other laws to contact their customers to provide them with information; the current uncertainty has made it extremely difficult to do so without fear of unscrupulous litigation. In an environment where fifty to seventy of a business's customers might only be reachable by mobile phone, it is important that the FCC move quickly to establish clear guidance to aid small business compliance without depriving customers of required or desired communications.

² Pub. No. 96-354, 94 Stat. 1164 (1980).

³ Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

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

⁵ See Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision, CG Docket Nos. 18-152, 02-278 (released May 14, 2018), 83 Fed. Reg. 26,284 (June 6, 2018)

⁶ *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

*Streamlining Regulation to Reduce Barriers to Infrastructure Deployment*⁷

Advocacy expressed support for the FCC's efforts to streamline regulations that are impeding the build-out of next generation networks that will drive our economy forward with new technology and consumer benefits, including the FCC's recent adoption of regulatory reforms related to small cell deployment, and its proposal to adopt one-touch-make-ready pole attachment policies. Advocacy shared that we have spoken with a number of small businesses that deploy both fiber and wireless networks who will benefit from these reforms.

*Promoting Investment in the 3550-3700 MHz Band*⁸

Advocacy has spoken with small wireless internet service providers (WISPs) that are concerned that the FCC's proposal to define the geographic license area for partial area licenses (PALs) using partial economic areas (PAEs), instead of smaller census tracts, may foreclose the use of 3.5 GHz spectrum by anyone other than large mobile carriers. Supporters of larger geographic license areas cite administrative burdens as the reason they prefer the change—Advocacy has concerns that the change could foreclose competition and result in decreased service in rural areas. Advocacy urged staff to weigh the impact of decreased competition and market entry against any gains achieved through administrative efficiency when making a final decision.

*USTelecom Petition for Forbearance under 47 U.S.C § 160(c)*⁹

Advocacy has had meetings and conversations with many competitive local exchange carriers (CLECs) that are very concerned about the possibility that the FCC will grant USTelecom its request for nationwide forbearance from the 1996 Telecommunications Act's wholesale unbundling and resale mandates. A blanket grant of forbearance in every market could have a devastating impact on small businesses that rely on unbundled network elements (UNEs) to serve customers with competitive voice and data services. Many of the CLECs we've spoken with have invested significantly into building their own fiber facilities using the revenue from the services they provide over UNEs and moving their customers over to their own competitive facilities over time. The presence of these CLECs in the market appears to be providing competitive pressure for incumbents to likewise invest in new fiber deployment and network upgrades. Advocacy shared these concerns with the FCC and urged the FCC to study the impact forbearance would have on the small businesses, competition, and the deployment of next generation networks.

⁷ See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79.

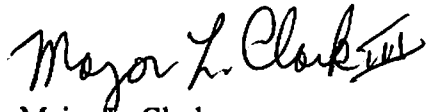
⁸ Notice of Proposed Rulemaking, Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258 (released October 27, 2017),

⁹ In The Matter Of Petition Of USTelecom For Forbearance Pursuant To 47 U.S.C. § 160(c) To Accelerate Investment In Broadband And Next Generation Networks, WC Docket 18-141

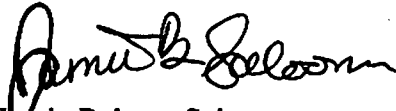
Conclusion

Advocacy appreciates the opportunity to forward the concerns of small businesses to the FCC. If you have any questions or require additional information please contact me or Assistant Chief Counsel Jamie Saloom at 202/205-6890, or by email at Jamie.Saloom@sba.gov.

Sincerely,



Major L. Clark
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration



Jamie Belcore Saloom
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration