

THE COMMUNICATOR

Federal Communications Commission
Office of Communications Business Opportunities

May 2004

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From the Director's Desk

Welcome to the inaugural issue of *The Communicator*, a newsmagazine published by the staff of the FCC's Office of Communications Business Opportunities (OCBO). Through this publication, we hope to provide information to those whom we serve—small, women-, and minority-owned communications businesses—to inspire them to create, innovate, compete, and succeed in this digital age of communications. We in OCBO are here to help.

We serve as the principal small business policy advisor to the Chairman and the Commissioners. In that capacity, OCBO develops and recommends objectives, policies, rules, and procedures to support increased ownership, contracting, and employment opportunities for small business owners, including minorities and women. Of the six goals of the FCC's Strategic Plan, our focus is on:

- Broadband
- Competition
- Spectrum
- Media
- Modernization

Building around these strategic goals, we organize conferences, seminars, and informal meetings that match small businesses with public and private funding sources from which they receive critical informational and technical re-

source assistance. We reach out through our extensive database to small communications businesses, entrepreneurs, trade associations and related organizations, and future communications industry leaders.

We also participate in a variety of national and local industry conferences. I have met with some of you at the events noted below, and look forward to meeting others at upcoming events.

- Black College Forum-Feb. 24 (FCC HQ hosted by the Consumer & Governmental Affairs Bureau)
- Washington Bar Association Career Fair-Feb. 28
- National Association of Regulatory Utilities Commissioner (NARUC)-March 8
- National Association of Black Owned Broadcasters (NABOB) Awards Dinner-March 12
- Hispanic Business Women of the Year Awards Reception-April 1
- FCC Advisory Committee on Diversity for Communications in the Digital Age-FCC HQ May 10
- NABOB Spring Meeting-May 21-26
- United Minority Media Association (UMMA) Annual Meeting-Sept. 16-18

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We further support the Strategic Plan by implementing the FCC's compliance with several statutes, including the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Act, and Section 257 of the Telecommunications Act of 1996. We review all of the Commission's notice-and-comment rulemakings to ensure that the agency has considered regulatory alternatives that aid small businesses.

Recently, we have been working toward the implementation of a compliance guide program that will provide small businesses with concise materials that explain how to comply with new FCC rules. OCBO will be working closely with the Bureaus and Offices in the coming months to launch a "compliance guides" program to assist small entities. These guides will describe, in plain language, the compliance burdens placed on small entities when the FCC adopts new rules. Although the FCC has produced hundreds of Fact Sheets and other documents over the years to describe compliance burdens, this new program will go further by focusing much more specifically on small entities. OCBO hopes that broad distribution of these guides will go a long way toward making small entities aware of their rights and responsibilities under the rules. (For an overview of some of our other projects, please turn to page 11.)

As you can see, OCBO plays a vital role in assisting the FCC fulfill its mission to serve the public interest, convenience, and necessity. Let us know how we can help you!



FCC Commissioner Kathleen Q. Abernathy (center) receives a report from Thomas M. Sullivan, Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration (right). OCBO Director Carolyn Fleming Williams is pictured on the left.

The report, *A Survey of Small Businesses' Telecommunication Use and Spending*, is available at <http://www.sba.gov/ADVO>

White House Initiative on Asian Americans and Pacific Islanders: The FCC Role

Belford V. Lawson III

President George Bush signed Executive Order 13216 (Executive Order) on June 6, 2001, the purpose of which is to increase opportunities and improve the quality of life for Asian Americans and Pacific Islanders (AAPIs) through greater participation in federal programs where they may be underserved. [President Clinton signed a prior Executive Order (No. 13215) on June 7, 1999]

Although many non-AAPIs tend to perceive the 13-million strong AAPI community as economically self-sufficient and progressive, aggregate statistics that project a successful, well-adapted group conceal the fact that many sub-groups within that community face difficulties in realizing optimal assimilation into American society. Particularly, among recent immigrants and their children, many AAPIs are marginalized by language and cultural barriers. Access to health care, residence in healthy environments, enjoyment of affordable housing, and achievement of optimal employment are problematical for many AAPIs.

To implement its mandate, the Executive Order initially designated the Secretary of the Department of Health and Human Services to organize a federal

Inter-agency Working Group (IWG). This mandate has now moved to the Office of the Secretary of the Department of Agriculture. The IWG, which consists of representatives of thirty-four participating federal agencies, oversees the development of all federal policies and initiatives addressing AAPI populations, particularly with respect to the development of programs and services for underserved AAPIs.

The Director of OCBO is the FCC's representative to the IWG. A separate group, the Coordinating Committee (CC), was created to implement the policies and programs designed by the IWG. The CC consists of staff members selected from each of the thirty-four currently involved federal departments and agencies. At present, I serve on the CC.

The Executive Order requires an Integrated Federal Plan (Plan). The Plan provides the thirty-four agencies with the opportunity to examine the capacity of the federal government infrastructure to serve the needs of underserved AAPI communities. A key responsibility for each agency is the implementation of an annual Fiscal Year implementation plan (IP). Pursuant to the IP, each agency

makes its own assessment as to whether a proactive outreach and implementation structure exists to address the unmet needs of AAPI populations.

The Executive Order recognizes three areas as core concerns:

- Economic and community development
- Federal employment
- Health

Economic and Community Development

According to statistics from the U.S. Small Business Administration, AAPI's own 30% of all minority-owned businesses. Approximately one-third of all Asian-owned businesses employed a total of 2.2 million people generating \$46.1 billion in payroll revenue. Other statistics are less encouraging: poverty rates in some AAPI populations, such as Native Hawaiians, other Pacific Islanders, and some Southeast Asian immigrant communities, are above the national average.

Both to support ongoing AAPI entrepreneurial activity, and to reverse social and economic factors that contribute to unacceptable poverty levels, the IWG has recommended that federal agencies consider provision of financial education programs; partnerships with Com-

munity Business Organizations (CBOs); provision of procurement and contracting opportunities; assistance in import-export development; facilitation of access to employment training and vocational training; development of senior housing and affordable housing; increases in senior and public transportation systems; and development of rural infrastructures.

Federal Employment

The U.S. Office of Personnel Management expects that during the next five to ten years, a massive number of current federal employees, particularly those in senior positions, will qualify for retirement or will retire. This scenario presents an unprecedented opportunity to plan for the future make-up of the federal workforce.

AAPIs make up about 5.4% of the overall federal workforce. At first glance, the profile is positive. Government-wide, AAPIs hold:

- 4.5% of white collar positions
- 7.5% of all professionals positions
- 3.2% of all administrative positions

A closer examination of the data, however, reveals that AAPIs make up:

- 4.43% of GS-14 employees
- 5.92% of GS-15 employees, and
- Only 2.3% of SES and other senior pay levels.

To provide for a federal workforce that is both talented and diverse, the IWG recommended that federal agencies consider the following measures:

- Accurate collection and reporting of employment data as a basis for relevant analysis;
- Establishment of a plan to ensure diversity;
- Maximizing training and skill development to identify and develop managerial talent;
- Development of recruitment, hiring, internship and mentoring programs;
- Development of bilingual positions; and
- Re-designing of SES candidacy development programs.

Health

Health is a major concern because language and cultural barriers limit optimal access of many AAPI populations to health care. Few non-AAPI Americans know that approximately 75% of Asian-Americans speak a language other than English at home and respond more readily to outreach efforts conducted in their native languages. Statistics indicate that the AAPI community experiences a wide range of health disparities exist. Addressing public health needs will be an ongoing focus of the AAPI Initiative.

AAPI Initiative—The FCC's Role

As noted above, OCBO represents the FCC on the IWG and the CC. Because our mission to promote business opportunities in telecommunications, we focus our efforts on promotion of AAPI economic and community development. We seek to cooperate with other agencies that are interested in using telecommunications technologies to provide business-related information services and telemedicine initiatives to rural, remote, and otherwise underserved populations.

For more information about the AAPI Initiative, please visit: <http://www.aapi.gov>

3G: Advanced Wireless Services (AWS)

Eric Malinen

The FCC has taken another step toward fulfilling its Strategic Plan with respect to spectrum management by encouraging a variety of new, advanced wireless services. The FCC has set aside additional radio spectrum that might be used for so-called Third Generation or “3G” services on high-speed fixed and mobile networks. The spectrum may be used for voice, data, and broadband, among advanced wireless services.

The Wireless Telecommunications Bureau (WTB) has presented the 3G services item for Commission action. The item includes a band plan that divides the available spectrum into five bands, using two band pairings each. An important development for rural and small entities is the Commission’s decision to offer use of two of the five bands through smaller geographic license areas. In addition, “bidding credits” will assist small entities in obtaining licenses—the Commission stated in an *FCC News Release*, “The licenses will be assigned via auction in the future. Fifteen percent bidding credits will apply for entities meeting the definition of small business used in the broadband PCS auctions, while 25 percent bidding credits will apply for very small businesses.” In determining which auction

bidders would qualify as small or very small businesses, the FCC coordinated the creation of two special small business size standards with the U.S. Small Business Administration. The special size standards for AWS are as follows:

- *Small Business*—an entity with average annual gross revenues that do not exceed \$40 million for the preceding three years.
- *Very Small Business*—an entity with average annual gross revenues that do not exceed \$15 million for the preceding three years.

For more information about AWS, please visit:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-251A1.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-240030A1.pdf

For more information about 3G, please visit: <http://www.fcc.gov/3G/>

** Special thanks to Mary Woytek, WTB, who assisted with the preparation of this article.*

Millimeter Wave: New Spectrum—New Services

Belford V. Lawson III

The FCC's Strategic Plan identifies six major goals, of which the management of spectrum is one. To accomplish the objectives associated with this goal, the FCC is committed to increasing the deployment of new services and making use of underutilized or unlicensed spectrum. The Commission recently adopted service rules that permit the licensing and registration of the "Millimeter Wave" spectrum. *See Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, Report and Order (rel. Nov. 4, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-248A1.doc); *see also* Parts 15 and 101 of the FCC's Rules. The item was prepared by the Wireless Telecommunications Bureau (WTB). The Commission expects that a wide range of fixed services will emerge and become established in these bands because technological advancement has made it possible for such services to function in these bandwidths in a manner not contemplated until recently.

Because technological innovation has enabled various fixed services, both wireless and wireline, to become functional in these bands, and because the allocation and service rules facilitate the participation of both new entrants and

experienced telecommunications entrepreneurs, we believe that significant opportunities for small business development will result from the Commission's adoption of the Millimeter Wave item. We anticipate that voice transmission will be feasible in this regime, but the expected capacity for transmission of large quantities of data insure that various data applications, including Internet applications, DSL, and fiber optic use, will be compatible with the regime.

The FCC will segment the bands to promote competition, especially in heavily populated areas. To maximize the number of users at any one location, the FCC will segment the 71-76 GHz and 81-86 GHz bands into four unpaired 1.25 GHz segments, for a total of eight segments. The FCC will not mandate any specific channels within any segment, and there will be no aggregation limit.

Pairing will be permitted in the Millimeter Wave spectrum to facilitate the operations of licensees that want to establish two-way communications. The FCC will not, however, require two-way communications.

The FCC will divide the non-Federal portion of the 92-95 GHz band into two

segments. As in the other two bands, these two segments will not be subject to an aggregation limit.

The licensing plan will permit maximum flexibility for all operators, including small entities. The primary features of the licensing plan include non-exclusive, nation-wide licensing with site-by-site coordination for all three bands. The FCC will authorize a given licensee in this system to operate anywhere in the U.S. by setting up links in as many different locations as will be in compliance with requirements to prevent interference.

The FCC foresees very little interference because channel frequencies are low and because bandwidth per channel is narrow. A system of registering each link at each site will be undertaken through the FCC's Universal Licensing System, and will also be coordinated with the federal government.

The FCC is working cooperatively with the National Telecommunications and Information Administration (NTIA) to establish a streamlined, automated, database-secured process that will enable licensees to expedite service to the public. The FCC has given priority to developing a link registration process involving a new NTIA-web-based database. The plan for the non-federal government link registration is comprised of two parts: (a) non-federal govern-

ment link coordination with the federal government, and (b) non-federal government link coordination with other non-federal links.

For coordination of non-federal government with federal government links, the future NTIA coordination website will contain federal government user information, both terrestrial and satellite, and also information about both federal and non-federal Radio Astronomy Service sites. A non-federal licensee will submit the data about its link to the NTIA database for coordination (or the licensee may rely on a third-party database manager to complete the Federal government coordination process). The NTIA database will transmit either a "green light" or a "yellow light." A green light signifies that the link is coordinated with the federal government. A yellow light will signify that the licensee must file an application for the requested link with the FCC, which will, in turn, submit the application to Interdepartment Radio Advisory Committee (IRAC) for coordination

To coordinate two non-federal licensees, a non-federal licensee must receive a green light from the NTIA coordination website, or IRAC approval, before a link may be registered. No further coordination is needed unless a database manager is notified of a frequency conflict. Such notification will trigger formal interference protection

procedures.

We believe that the rules for licensing, registration, and pairing will stimulate investment in new technologies, provide a critical means of achieving spectrum efficiency, and promote R&D.

Petition For Reconsideration

On February 23, 2004, the Wireless Communications Association International Inc (WCA) filed a Petition for Reconsideration of the Report and Order. In its Petition, WCA made the following requests or recommendations:

(1) that the registration process include a requirement that each new user of the 70/80 GHz bands verify *in advance* that the proposed link will not cause harmful interference to any existing link previously registered in either the government or non-government database;

(2) that the FCC reconsider its segmentation and channel-loading rules, preferably eliminating them but at least reducing the minimum throughput at which a designated assignment will be eligible for interference protection;

(3) that the FCC reconsider certain issues related to antenna and power requirements, including (a) the power/gain tradeoff developed by the industry; (b) a requirement for certain radios to use Automatic Transmitter

Power Control; and (c) the power spectral density limits suggested by the commenters;

(4) that the FCC adopt language making conditional operating authority available to first-time 70/80 GHz applicants who have successfully coordinated their proposed link(s) but are awaiting their non-exclusive nationwide license; and

(5) that the FCC adopt the draft text on interference protection criteria proffered by WCA, rather than the text on interference protection that the FCC placed in Section 101.174(z).

At this writing, no action on the Petition has been taken by the Commission.

** Special thanks to Sandra Danner, WTB, who assisted with the preparation of this article.*

OCBO Projects—A Sampling

In addition to our compliance guide program, here are brief overviews of additional projects from OCBO's regulatory portfolio.

RFA and SBREFA

5 U.S.C. §§ 601, 603-09, 611

In all notice and comment rulemaking proceedings, the Regulatory Flexibility Act (RFA) requires the FCC to perform regulatory flexibility analyses or certifications concerning the impact of its proposed and final rules on small entities. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA):

- Encourages agency awareness and understanding of the impact of its regulations on small entities;
- Requires that agencies communicate and explain their findings to the public; and
- Encourages agencies to provide flexibility and regulatory relief to small entities, where appropriate.

The RFA specifies the elements each analysis must contain. If an item is not

expected to have a significant economic impact on a substantial number of small entities, the agency need only prepare a short certification explaining why this is so. Comments or petitions for reconsideration may be directed at such analyses or certifications by the public or by regulatory agencies (particularly, the U.S. Small Business Administration's Office of Advocacy). Further, the RFA provides for judicial review of final regulatory flexibility analyses and certifications.

Small Business Size Standards

15 U.S.C. § 632

The Small Business Act requires Small Business Administration (SBA) approval before the FCC may adopt a small business size standard different from one established by the SBA. With the goal of ensuring that its initiatives accurately target small entity participation in the telecommunications industry, the FCC works closely with the SBA's Office of Size Standards to create new, "special" telecommunications size standards. Pursuant to SBA rules, the FCC coordinates extensively with both the Office of Size Standards and the SBA's Office of Advocacy to keep the SBA apprised of new size standard initiatives and to obtain the necessary approvals. The FCC sends the SBA descriptions

and analyses of proposed size standards prior to adoption of a notice of proposed rulemaking, and sends additional comments and documentation at each step of the rulemaking process. At the end of the process, the FCC sends a formal request for approval to the SBA Administrator before final FCC consideration of the special size standard(s). This close coordination with the SBA has especially helped the FCC initiate its various radio spectrum auctions. The FCC's Bureaus and Offices, particularly the Wireless Telecommunications Bureau, submit several size standard requests to the SBA each year. OCBO regularly assists with this process, which includes meeting with the SBA.

Unified Agenda (semi-annual)

5 U.S.C. § 602

OCBO coordinates the FCC's compliance with this section of the RFA. After working with the FCC's Bureaus and Offices, OCBO submits the FCC's entry for the U.S. General Services Administration's semi-annual "Unified Agenda of Federal Regulatory and Deregulatory Actions." This publication provides information, in a uniform format, about regulations that the government is considering or reviewing. The Unified Agenda has appeared in the *Federal Register*, during Spring and Fall, since 1983. It helps agencies comply with certain obligations under the RFA, other

statutes, and Executive Orders. As part of each Unified Agenda compilation, the FCC typically lists and describes 130 or more ongoing rulemaking proceedings. These descriptions assist the public in becoming involved in the regulatory process and assist the regulated community in complying with existing regulation.

10-Year Review of Rules

5 U.S.C. § 610

Working with the FCC's Bureaus and Offices, OCBO coordinates the FCC's compliance with this section of the RFA. The FCC completes and publishes a comprehensive listing of rules subject to review under the RFA's "ten-year review of rules" provision. Section 610 requires that agencies publish in the *Federal Register* a plan for the periodic review of rules that have a significant economic impact on a substantial number of small entities. The most recent FCC compilations typically have provided a list of hundreds of rules in an effort to assist the public in identifying rules that might be amended or rescinded in the public interest. *The FCC's record of complying with this requirement is now at the top of sixty or so pertinent federal agencies.*

Small Business Owner— Need Information?

- FCC auctions and bidding credits
- Small business funding sources
- Women-owned business matters
- License applications, mods, and renewals
- Minority-owned business matters
- Small business enforcement issues

We have it—contact us!

<http://www.fcc.gov/ocbo/>

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