



October 27, 2005

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

**RE: Ex Parte Presentation in a Non-Restricted Proceeding
Regarding Possible Revision or Elimination of Rules Under the Regulatory
Flexibility Act, 5 U.S.C. Section 610 (DA-05-1524)**

Dear Mr. Chairman:

On May 31, 2005, the Federal Communications Commission (“FCC” or “Commission”) issued a public notice in the above-captioned proceeding¹ asking for comment on a review of rules adopted by the agency in 1993 through 1995 and whether they should be continued without change, amended, or rescinded, consistent with Section 610 of the Regulatory Flexibility Act (“Section 610 Review” or “Public Notice”). The Office of Advocacy (“Advocacy”) has reviewed this public notice and the comments received in response.

Congress established the Office of 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.² Advocacy also has a statutory duty to monitor and report to Congress on the Commission’s compliance with the Regulatory Flexibility Act (“RFA”). 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.

Advocacy commends the Commission for the steps it has taken to comply with Section 610 and encourages the Commission to consider the comments presented and respond to the recommendations made by small businesses. The Public Notice is a positive first step in soliciting input from small businesses on regulations that are ten years old.

¹ See *FCC Seeks Comment Regarding Revision or Elimination of Rules Under the Regulatory Flexibility Act*, DA-05-1524 (May 31, 2005).

² 15 U.S.C. § 634(c)(1)-(4).

While the FCC made the Public Notice available on its Web page, the Commission did not enter the document into the Electronic Comment Filing System (“ECFS”) and provided no alternative electronic means of filing comments to the agency. The FCC utilizes electronic filing in all of its significant rulemaking processes and most of its adjudicatory ones. Advocacy encourages the FCC to incorporate future Section 610 reviews into the ECFS and allow small businesses to file comments electronically.

Advocacy found the following comments of particular note because of the potential significant impact on small businesses.

- The Hispanic Information and Telecommunications Network (“HITN”) addressed Section 27.1201(a)(3) which covers the Educational Broadband Service (“EBS”). EBS licensees are often small non-profit entities. HITN recommended that the EBS recognize that educational institutions may be using the Internet as their source for educational content which cannot be previewed or screened by the service provider as is currently required. Also, the EBS is switching from site-based licensing to geographic licensing, and HITN recommended that the language restricting the absolute distance from transmit sites to qualified schools be revised.
- ACA International (“ACA”) asked the FCC to clarify that calls to wireless telephone numbers placed by creditors, many of whom are small businesses to recover payment obligations for previously purchased goods or services are not prohibited when initiated by an autodialer. ACA believes that this clarification is consistent with the Telephone Consumer Protection Act of 1991 and the Federal Trade Commission’s Telemarketing Sales Rule.³
- The American Cable Association (“American Cable”) addressed Sections 11.11, 76.65, 76.93, and 76.103 which covers the Emergency Alert Systems (“EAS”) and retransmission consent. American Cable proposed adjustments to the EAS intended to minimize the impact on small businesses while maintaining the utility of EAS as a source of emergency information. American Cable also proposed adjustments to the retransmission consent rule to minimize the economic impact.

³ *FTC Telemarketing Sales Rule*, 68 Fed. Reg. 4580, 4664 no. 1020 (concluding that debt collection calls do not constitute telemarketing subject to the TSR).

Advocacy encourages the FCC to give these comments full consideration and to consider opening rulemakings if there is not already one addressing the issues raised. For all of these rulemakings, the Commission should prepare regulatory flexibility analyses that draw upon the comments submitted by small businesses in response to the Section 610 Review. The Office of Advocacy is available to assist the Commission in these efforts. For additional information or assistance, please contact me or Eric Menge of my staff at (202) 205-6533 or eric.menge@sba.gov.

Sincerely,

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Eric E. Menge
Assistant Chief Counsel for Telecommunications

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Jonathan Adelstein
Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs
Marlene H. Dortch, Secretary, FCC
Eric Malinen, SBA Liaison, FCC