

National Broadband Survey Confirms Metro/Rural Imbalance

by Rebecca Krafft, Editor

The availability, speed, and price of broadband services vary significantly between metro-area and rural small businesses, according to a Congressionally mandated report published by the Office of Advocacy in November.

The study, entitled *The Impact of Broadband Speed and Price on Small Business*, was written by Columbia Telecommunications Corporation, a small business located in Kensington, Maryland, under contract with Advocacy. The authors find significant disparities between the Internet services available to rural and metro-area small businesses. Specifically, when price is held constant, rural small businesses get less service compared with metro-area small businesses. When services are held constant, rural small businesses pay higher prices.

Congress directed Advocacy to conduct the study in section 105 of the Broadband Data Improvement Act of 2008. The study included a national survey of the price and

speed of Internet services available to small businesses. The report captures the current conditions prevailing in the Internet services marketplace against the backdrop of technological, industry, and regulatory change of recent decades.

The survey revealed many aspects of businesses' Internet usage, high-tech attitudes, and needs:

- Small businesses want both competition and choice in Internet service. They see competition as key to innovation, customer service, and lower prices. The survey data demonstrate that the small business Internet market, in most cases, fails to provide this competition or choice to small businesses from a performance or price perspective.
- Approximately one-third of small businesses surveyed indicate a need for broadband service requiring greater capacity networks than currently exist in many locations in the United States.
- The authors' analysis of the broadband market found that very

little, if any, competition exists. Small business consumers' choice in a given geographical area is limited to very few broadband providers, and in most cases just two: the incumbent phone company and the cable company.

The report also contains policy recommendations for expanding access to broadband services. It is available at www.sba.gov/advo/research/rs373tot.pdf.



Policymakers, small business owners, and academics met in the Kennedy Caucus Room on Capitol Hill for Advocacy's Jobs Symposium (see page 3).

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Legislative Update

Jobs Act Codifies RFA Measures, Gives Advocacy Budget Independence

by Thad Inge, Assistant Chief Counsel for Congressional Affairs

President Obama signed the Small Business Jobs Act of 2010 into law on September 27. The new law is the most significant piece of small business legislation in over a decade. It includes a wide variety of provisions aimed at spurring investment and allowing small businesses to grow and create jobs. In addition to extensive tax relief for small businesses and enhanced SBA loans, the law strengthens small businesses' ability to compete for contracts, promotes small business exporting, and helps community banks put low-cost capital into the hands of small businesses.

The Small Business Jobs Act also has several provisions which directly affect the Office of Advocacy. The law gives Advocacy budgetary independence by creating

a separate account in the General Fund of the Treasury for the office. While Advocacy has always been the independent voice for small business within the federal government, the greater budgetary independence will bolster this position.

Another provision in the legislation will strengthen Advocacy and the Regulatory Flexibility Act as well. The provision requires agencies to provide more detailed analyses when responding to comments from the chief counsel for advocacy and to give a detailed statement of any changes made in a rule as the result of the comments. This provision codifies the measures in Executive Order 13272 that first stipulated these requirements.

The Small Business Jobs Act has already proved instrumental

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in providing access to capital for small businesses. Moving forward, it will have a strong impact helping businesses create jobs as well as helping Advocacy work on their behalf.

Regulatory News

Advocacy Files Comments with FCC on Broadband Business Market

by Jamie Belcore Saloom, Assistant Chief Counsel

On October 15, Advocacy filed public comments with the Federal Communications Commission (FCC) regarding its public notice and request for comments on the Broadband Business Marketplace.

The comments followed an Advocacy roundtable with representatives of small and medium-size broadband providers. They discussed the role that competitive broadband providers play in connecting small business consumers to the Internet via a number of technologies, as well as the challenges they face in the market. All participants expressed concerns regarding barriers to greater market participation for their firms. Advocacy urged the FCC to exam-

ine how the specific challenges competitive broadband providers face in the market affect the availability of high-quality, affordable broadband access for small business consumers.

Advocacy's comments also included two key conclusions drawn from the recently released study, *The Impact of Broadband Speed and Price on Small Business*. The study concluded that rural small businesses pay more for and receive lower quality services than their urban counterparts, and rural small business consumers do not have adequate choices in the broadband market.

These findings take on added impact in light of the FCC's *Sixth*

Annual Broadband Deployment Report, which was published in July. The FCC report concluded that broadband is not being deployed in a reasonable and timely fashion. As such, Advocacy urged the FCC to examine the vital role that small broadband providers play in creating a robust, competitive market for broadband services. Advocacy stressed that it is crucial for the FCC to adopt policies that maximize the nation's existing network infrastructure and encourage further innovation and investment in broadband infrastructure and services. Small business broadband providers will be indispensable to this end.

Message from the Chief Counsel

Where Will the Jobs Come From?

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

According to the Office of Advocacy's newly updated *Frequently Asked Questions* (FAQ), 65 percent of the all the net new jobs since the early 1990s were created by small businesses. In the late 1990s, Advocacy funded research and a conference on the topic "Are Small Firms Important? Their Role and Impact."

I mention these two facts because it wasn't so long ago that the role of small business in our economy was heavily debated—and whether it even had a significant role was not universally accepted. In certain circles, small businesses were viewed mainly as a fallback when a career in corporate America fizzled out.

As a former small business owner, and now as chief counsel for advocacy, I am pleased that small businesses are finally being given their rightful due. Not only do they create the lion's share of net new jobs, they generate about half of GDP and employ about half of the workforce. Above all, they are a catalyst of economic and social progress. Small firms introduce

new ideas and new technologies into our daily lives, and in so doing economic transformations take root.

It goes without saying that the term "small business" extends to startups as well. I haven't come across many startups that have more than 500 employees on day one.

"The overall view of the Jobs Symposium participants is that the private-public partnership is required for small businesses to succeed and hence create jobs."

Unemployment is today's Public Enemy Number One. Job creation is a universal concern—and goal. In October, Advocacy brought together academics, public policymakers, and small business owners to explore job creation in our economy. The event was called "High-Impact Entrepreneurship Outlook: Finance and Innovation Create Jobs."

How do we get there from here? The recent recession has been

the longest and deepest since the 1930s. Reducing the stubbornly high unemployment rate has been a top priority for the Obama Administration and representatives on Capitol Hill. To frame our work at the Jobs Symposium, I asked two questions: Does government really create jobs? How does the Small Business Jobs Act help small business?

Does government really create jobs? The overall view of the Jobs Symposium participants is that the private-public partnership is required for small businesses to succeed and hence create jobs. During the question period, Dr. Jeremy Wiesen pointed out that it was the U.S. government that funded the Internet (known as Arpanet) in the 1960s and provided research grants that led to key breakthroughs in semiconductor technology.

From my own experience as an early user of the Internet and a semiconductor chip designer, I can attest that Dr. Wiesen's point is spot on. Many of the technology breakthroughs of previous decades

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Swarna Soppadandi, of American University's Washington College of Law, and Waymon Armstrong, a symposium panelist and CEO of Engineering & Computer Simulation, Inc.



Kevin T. Conroy, president and CEO of Exact Sciences Corporation, discussed impediments to growing an innovative small business.

Advocacy Participates in Design of Small Business Review Panels at Consumer Financial Protection Agency

by Jennifer Smith, Assistant Chief Counsel

The Office of Advocacy is helping to build small business consideration into the structure of an agency at its beginning stages of formation. The newly created Consumer Financial Protection Bureau (CFPB) is required to comply with the panel process mandated by the Small Business Regulatory Enforcement Fairness Act (SBREFA). The panel process provides an agency with input from small entities in the earliest stage of rulemaking. Advocacy has met with attorneys from the Department of the Treasury (the agency charged with the implementing the CFPB) to discuss the design of the SBREFA panel process.

In November, Chief Counsel Winslow Sargeant met with the CFPB leadership to discuss incorporating the SBREFA panel process into the new agency's rule-making procedures. Dr. Sargeant also attended a meeting at the White House in which Special

Advisor Elizabeth Warren briefed trade associations on her plans for implementing the CFPB's mandate.

On November 18, the Office of Advocacy hosted a small business roundtable to inform small firms in the banking and finance sector about the new agency and the SBREFA panel process. The first panel focused on the CFPB and included representatives from Treasury's CFPB implementation team, the Department of Housing and Urban Development, the Federal Reserve, the Federal Trade Commission, and the Federal Deposit Insurance Corporation. The panelists discussed the implementation process and explained which issues will stay with the original agency and which will shift to the new CFPB. The second panel focused on the SBREFA panel process and included staff from the Office of Advocacy and the Environmental Protection Agency, as well as a

Cost of Credit to Receive Scrutiny

The potential for new regulations to increase the cost of credit for smalls is another area addressed in the Dodd-Frank Act, which created the CFPB. The Act requires the CFPB to specifically address the impact of its regulations on the cost of credit for small entities in its initial regulatory flexibility analyses and to consider alternatives to mitigate any increases. In addition, the agency's final regulatory flexibility analyses must include a description of the steps taken to minimize any additional cost of credit for small entities.

small entity representative.

If you have any questions about the CFPB, please contact Assistant Chief Counsel Jennifer A. Smith at jennifer.smith@sba.gov or (202) 205-6533.

Advocacy Participates in ABA Administrative Law Conference

This year's American Bar Association Administrative Law Conference featured two Advocacy firsts: a professional milestone for Regulatory Flexibility Act (RFA) training and a standing-room only crowd for a panel on the Paperwork Reduction Act (PRA).

The conference sessions offered continuing legal education credits to attorneys working in the field of administrative law. This year, for the first time, the conference included a training session on the Regulatory Flexibility Act (RFA) moderated by Assistant Chief Counsel Jennifer Smith and led by Acting Deputy Chief Counsel Claudia Rodgers.

In the 30 years since the RFA was enacted and Advocacy was appointed its legal watchdog, the office has worked to strengthen compliance with the law throughout the federal government. In recent years, Advocacy has focused on training federal officials—the key people responsible for implementing the law. The inclusion of RFA training in the Administrative Law Conference is another step toward educating attorneys and officials and making RFA compliance part of the standard rulemaking routine.

Assistant Chief Counsel David Rostker anchored the Paperwork Reduction Act panel. Rostker is an authority on the topic after 14 years' service at the White House Office of Information and Regulatory Affairs. The panel attracted a large interested audience. Rostker observed that the intense interest shown in the PRA session may demonstrate a renewed interest in administrative law and the connection between the PRA and small businesses.

Chief Counsel's Message, from page 3

were funded by U.S. government agencies (the National Science Foundation, DARPA—the Defense Advanced Research Projects Agency, the National Institutes of Health, and others). The key is that government actions were the catalyst in the commercialization of these technologies (technology transfer). The results are well known: business creation, job creation, and wealth creation.

There's a popular expression among high-tech entrepreneurs and researchers: "Research is turning money into knowledge, but commercialization is turning knowledge into money." It's equally important to add that commercialization is turning knowledge into jobs. These kinds of public-private partnerships are key to creating

an environment for small business growth and job creation.

Of equal significance in our efforts at job creation is the Small Business Jobs Act of 2010, which was signed into law in September. The law provides small businesses with resources and financing to enable them to grow. SBA Administrator Karen Mills's keynote address summed up the critical measures in the act. It provides an additional \$30 billion in funding to community banks. This financing will be a lifeline for many small businesses. Gene Sperling, counsel to the Treasury secretary, closed the symposium with more details of the Small Business Jobs Act. It was refreshing to have high-level administration officials in attendance. Small business growth and job creation are key priorities of the Obama Administration.

As we gathered in the Kennedy Caucus Room in October for the Jobs Symposium, I couldn't help but recall the room's historic stature. In this same venue, senators gathered for hearings on the Titanic tragedy, Watergate, the Vietnam War, and Iran–Contra. The backdrop reminded us that in times of worry and uncertainty, our nation comes together to seek solutions to problems that afflict us.

On government regulations, the Office of Advocacy will continue to be engaged on all fronts. We'll be vigilant to ensure that as we cheer on government programs providing access to capital, the other hand of government is not imposing lopsided regulations that result in a zero-sum gain for small businesses.

Where will the jobs come from? You guessed it—small businesses.

Proposed Changes to OSHA's On-Site Consultation Program

by Bruce Lundegren, Assistant Chief Counsel

The Office of Advocacy recently filed comments on proposed changes to the Occupational Safety and Health Administration's (OSHA) On-Site Consultation Program. OSHA's proposal would change the criteria under which participants in the program could be subject to enforcement inspections by OSHA. Small business representatives fear the move would discourage small business participation in a program that has been highly successful at promoting safe and healthy workplaces.

On-Site Consultation is a voluntary OSHA-funded program that offers small businesses confidential advice from safety consultants to identify and correct potential workplace hazards. The consultant inspects the site and works with the employer to abate any safety hazards identified during the inspection in a timely manner.

One hallmark of the program has

been a "wall of separation" between the voluntary consultation process and OSHA enforcement personnel. Currently, employers who abate any hazards identified during the consultation are guaranteed confidentiality from the enforcement side of OSHA. Further, successful participants in the On-Site Consultation program become eligible for recognition under OSHA's Safety and Health Achievement Recognition Program (SHARP), which recognizes businesses that complete the On-Site Consultation program and maintain an exemplary safety and health program. SHARP participants receive an exemption from programmed OSHA inspections for one year (with an opportunity to extend the exemption up to three years). According to OSHA's website, there were some 14,411 visits conducted at small businesses under the On-Site Consultation program in fiscal year 2010.

The proposal would make three significant changes to the current rules, including giving more discretion to OSHA's regional administrators to terminate an inspection in progress, giving greater discretion to the OSHA assistant secretary to subject participants to programmed inspections, and reducing the exemption period for SHARP participants from three years to one.

Advocacy discussed OSHA's proposed rule with small business representatives and recommended that OSHA maintain the "wall of separation" between the On-Site Consultation program and its enforcement program, better explain why the proposed rule is needed, and clarify the circumstances that would trigger inspections under the proposed rule. Advocacy also stated that the rule would have benefited from small business input.

Advocacy Details Impact of H-2B Program Changes on Small Employers

by Janis Reyes, Assistant Chief Counsel

On October 27, the Office of Advocacy filed a comment letter with the Department of Labor (DOL) regarding its proposed rule, "Wage Methodology for the Temporary Non-Agricultural Employment—H-2B Program."

The H-2B program allows non-agricultural seasonal employers facing a shortage of U.S. workers to hire temporary unskilled workers from foreign countries during seasonal or peak times. The proposal was issued in response to an August 30 court order which required the agency to promulgate new regulations for determining the prevailing wage rate paid to H-2B workers.

DOL's proposal changes the methodology for establishing the prevailing wage rate for H-2B workers. The current methodology uses a four-tier wage structure based on DOL's Occupational Employment Statistics wage survey. DOL is proposing to move to a single-tier system which would

use an average of wage rates in each job category regardless of skill level and experience. DOL estimates that the change will result in hourly wage increases ranging from \$1.37 to \$10.61 per hour for H-2B workers.

Advocacy's comment letter reflected input from an October 20 roundtable on the proposed rule. The roundtable was attended by DOL staff and small businesses stakeholders from the construction, hotel, landscape, crab processing, amusement park, and food processing industries. Participants expressed concerns that the proposal would have devastating consequences for their businesses. Small entities stated that the H-2B visa program is an indispensable safety valve for seasonal employers because it is difficult—if not impossible—to attract U.S. workers to do unskilled and temporary work in remote areas.

Participants also stated that the steep increase in labor costs for

H-2B workers would shut them out of this vital program and may result in job losses for American workers, reduction of operations, and business closures.

Advocacy's comment letter also cited deficiencies in the agency's initial regulatory flexibility analysis. Advocacy believes the analysis does not adequately capture the number of small entities affected by this rule or its economic impact on them, and it does not include any significant alternatives to the rule. The comment letter highlighted regulatory alternatives recommended by small business representatives at the roundtable. DOL will post a summary of all comments on www.regulations.gov. A copy of Advocacy's letter can also be found at: www.sba.gov/advo/laws/comments.

To learn more, contact Janis Reyes at janis.reyes@sba.gov or (202) 205-6533.

Three SBREFA Panels Underway at EPA

The Office of Advocacy is active on a number of small business advocacy panels with the Environmental Protection Agency (EPA). EPA is required under the Small Business Regulatory Enforcement Act (SBREFA) to convene a panel whenever one of its proposed rules is expected to significantly affect a substantial number of small entities. In cooperation with Advocacy, the panel is a formal process for the agency to receive input from small entities that may be subject to regulation before the rule is proposed.

Two ongoing panels concern emissions controls for air toxics (required by section 112 of the Clean Air Act). The first panel covers residential wood combustion devices, including heaters that burn wood and various forms of solid biomass. This panel is nearing completion. The second panel covers coal- and oil-fired electricity generating units greater than 25 megawatts (utility power plants). This panel is preparing to receive input from the small entity representatives. A third EPA panel concerns the agency's efforts to develop a national stormwater run-off rule under the Clean Water Act. The rule would apply to construction and development firms. This panel is about to enter the formal outreach phase.

EPA has also informed Advocacy of its intention to convene three more panels in the near future. One panel would investigate the impact of requiring hard rock mining operations to provide evidence of financial responsibility, such as insurance or a financial bond (implementing section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act). A second would gather input for rulemakings to implement the Formaldehyde Standards for Composite Wood Products Act. The third would address small business impacts of regulating lead hazards created by renovation, repair, and painting of public buildings constructed before 1978 and commercial buildings.

—by David Rostker, Assistant Chief Counsel

Office of Advocacy Welcomes New Staff Members

Joining the Office of Advocacy's headquarters staff are Michael Landweber, Kia Dennis, and David Rostker.

Michael Landweber is Advocacy's senior advisor and director of regional affairs. He was formerly the associate director at the Partnership for a Secure America, a nonprofit organization dedicated to promoting bipartisanship in foreign policy and national security. He spent eight years working on non-proliferation initiatives at the U.S. Department of State. Landweber has also worked for *The Japan Times* in Tokyo and the Associated Press in Washington, D.C. He holds a joint master's degree in public policy and Southeast Asian studies from the University of Michigan and a bachelor's in East Asian studies from Princeton University.

Dennis and Rostker are joining Advocacy's Office of Interagency Affairs as assistant chief counsels.



From left, David Rostker, Kia Dennis, and Michael Landweber.

Kia Dennis received her law degree from Georgetown University Law Center. She worked for two large law firms in New York City, representing clients in commercial transactions, until 2006. She spent the next three years representing

small businesses and nonprofits at the University of Baltimore Law School Community Development Clinic. She handled corporate governance matters, compliance with state and federal regulations, employment matters, and real estate transactions. Dennis received her bachelor's from Princeton in economics. As assistant chief counsel, she will deal with natural resources, agriculture, and education issues.

David Rostker has spent the previous 14 years as a policy analyst at the Office of Management and Budget's Office of Information and Regulatory Affairs. He most recently served as a staff lead for reviews of regulations and information collections from the Environmental Protection Agency and the National Oceanic and Atmospheric Administration. He is an expert on the Paperwork Reduction Act. Rostker graduated *magna cum laude* from the George Mason University School of Law; he has a master's degree in economics from the University of Wisconsin-Madison and bachelor's in physics from Princeton. As assistant chief counsel, Rostker will handle an environmental portfolio, including rules issued under the Clean Air Act and other air-related statutes.

Region III Advocate Appointed

Ngozi Bell has been appointed the regional advocate for federal region III, covering Delaware, the District of Columbia, Maryland, Pennsylvania, West Virginia, and Virginia. Regional advocates help identify new issues and concerns of small business owners, and they work closely with the chief counsel for advocacy.

Most recently, Bell served as vice president of Birchmere Ventures, an early stage venture capital firm that focuses on investing in and developing startup companies in the medical, cleantech, and technology sectors. She has also worked on small business initiatives in the telecom and wireless sectors. In 2005, Bell cofounded a not-for-profit Nigerian-American organization in Pennsylvania that focuses on education, cultural exchange, and economic development. She has also operated a small business in the fashion and small transportation sector. Bell received her master's degree in electrical engineering from Florida A&M/Florida State University and her bachelor's degree in physics from University of Port Harcourt in Nigeria.

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Chief Counsel Testifies, Calls for Repeal of 1099 Requirement

On November 18, in testimony before the U.S. Senate Committee on Small Business and Entrepreneurship, Chief Counsel for Advocacy Winslow Sargeant called for complete repeal of the expanded Form 1099 reporting requirement. The hearing, entitled “Next Steps for Main Street: Reducing the Regulatory and Administrative Burdens on America’s Small Businesses,” focused on regulatory issues that affect small business.

“The Form 1099 requirement will greatly increase the reporting and recordkeeping burdens on small businesses,” Dr. Sargeant said. “We’ve heard strong opposition from small business about the new 1099 requirement, and the message we heard was ‘repeal.’ I endorse repeal and I commend Senator Baucus and Senator Landrieu on introducing legislation that will remove this burden on American small business.”

In addition, Dr. Sargeant testified about Advocacy’s recently released study, *The Impact of Regulatory Costs on Small Firms*. He also discussed the new Consumer Financial Protection Bureau, which is the

third agency whose proposed rules must go through the SBREFA panel process. Dr. Sargeant’s testimony is online at www.sba.gov/advo/laws/test10_1118.html



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