Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing	)	CC Docket. No. 98-170
and	)	
Billing Format	)	

Comment of the
Office of Advocacy, U.S. Small Business Administration
in Support of United States Telephone Association's
Petition for an Expedited Waiver or Stay

The Office of Advocacy of the United States Small Business Administration ("Advocacy") submits these comments in support of the United States Telephone Association's ("USTA") Petition for an Expedited Waiver or Stay ("USTA's Petition")[1] which was filed in response to the Federal Communications Commission's ("FCC" or "Commission") First Report and Order and Further Notice of Proposed Rulemaking ("TIB Order") in the above captioned proceeding.[2] In the TIB Order, the FCC adopted regulations designed to make consumer's telephone bills easier to read and understand. Advocacy believes that the regulations adopted by the Commission are unduly burdensome on small businesses and would interfere with other important public policy goals, such as Year 2000 preparations. Therefore, Advocacy supports USTA's Petition and recommends that the FCC grant a waiver of the regulations.

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305[3] to represent

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[1] *In the Matter of* Truth-in-Billing and Billing Format, *Petition by USTA for an Expedited Waiver or Stay*, CC Dkt. No. 98-170 (filed July 16, 1999).

[2] *In the Matter of* Truth-in-Billing and Billing Format, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Dkt. No. 98-170 (rel. May 11, 1999).

[3] Codified as amended at 15 U.S.C. §§ 634 a-g, 637.

the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.[4] Advocacy also has a statutory duty to monitor and report on the FCC's compliance with the Regulatory Flexibility Act of 1980,[5] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Subtitle II of the Contract with America Advancement Act.[6]

The Commission has the authority to waive its rules if there is good cause to do so.[7] The standard for a waiver was laid out in *WAIT Radio v. FCC*.[8] The D.C. Circuit held when considering a petition for waiver, the FCC must determine if: (1) special circumstances warranting a deviation from the general rule and (2) whether such a deviation would serve the public interest.[9]

Advocacy fully supports USTA's petition for a waiver of the TIB Order for small incumbent exchange carriers ("ILECs"). However, Advocacy recommends expanding this waiver to all small telecommunications carriers. Advocacy believes that a waiver for small carriers meets the criteria outlined in *WAIT Radio*. Small carriers labor under special circumstances, and a waiver would be in the public interest.

As USTA states in its petition, small ILECs have different and distinct needs and require a waiver to the TIB Order.[10] Advocacy supports this statement and adds that all small telecommunications carriers face different and distinct needs. Unlike large carriers, small

4 15 U.S.C. § 634c(1)-(4).
5 Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.) .
6 Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).
7 47 C.F.R. § 1.3
8 *WAIT Radio, Inc. v. Federal Communications Comm'n*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).
9 *Id*. at 1159.
10 USTA Petition at 8.

carriers lack the size necessary for economies of scale and scope. Because of their small size, regulations carry disproportionate burdens for small carriers. While a large carriers can spread the costs of regulatory compliance over millions of access lines, small carriers cannot, making them less competitive in the marketplace. Furthermore, many small carriers outsource their billing process to third parties. A drastic change in the billing process in the short time-frame that is necessary to comply with the TIB Order would carry substantial charges and penalties for the small carriers that are not faced by the larger carriers.[11]

Advocacy also agrees with USTA that Year 2000 remediation ("Y2K") issues are a principle concern for small carriers.[12] Advocacy found USTA's comments on Y2K very indicative of the state of small ILECs [13] and adds that these concerns affect all small telecommunications carriers. The Y2K issue is a unique occurrence that is unprecedented and is unlikely to ever be repeated. Advocacy believes that Y2K preparation efforts and the different and unique needs of small carriers satisfy the special circumstances requirement for a waiver.

Advocacy supports USTA's contention that a waiver for small ILECs is in the public interest but adds that the waiver should be expanded to all small telecommunications carriers. The rapid compliance requirements of the TIB Order would force unnecessary regulatory burdens on small carriers, which would be passed on to consumers. These higher costs to the consumer would discourage customers from choosing small carriers, frustrating the Commission's goal to increase competition. Furthermore, small carriers are often the telecommunications providers in high-cost areas, where competition is scarce and the consumer has little choice. These higher regulatory costs will likely raise costs to small business and

[11] *See* Comments of the Office of Advocacy, U.S. Small Business Administration, to the *First Report and Order and Further Notice of Proposed Rulemaking*, CC Dkt. No. 98-170 (July 16, 1999).

[12] USTA Petition at 9.

[13] USTA Petition at footnote 20.

residential consumers in these areas, discouraging telecommunications and economic development.

In addition to burdens placed on the consumer, Advocacy believes that the unnecessary regulatory burden on small carriers, mandated by the TIB Order, would disserve the public interest. The cost of compliance with the TIB Order would draw resources away from other important public interest goals, especially broadband development, local competition, and Y2K preparation. While reducing consumer confusion is in the public interest, it must share that stage with other public policy goals. The TIB Order, as written, would force carriers to curtail their efforts to pursue other public policy goals to meet the TIB Order requirements.

Advocacy does not believe that this is in the public interest, which would be better served by an indefinite waiver balancing these public policy goals. At the very minimum, the Commission should grant a limited-time waiver that would allow the carriers to complete their Y2K preparations without pause. Also, a limited-time waiver would allow carriers come into compliance in a manner that is not prohibitively burdensome and without interfering with other public policy goals.

Conclusion

Advocacy supports USTA's petition for waiver to the TIB Order for small ILECs but believes that any waiver granted should be expanded to include all small telecommunications carriers. A waiver is warranted in this instance, because small carriers face different and distinct needs and face unique costs while preparing their systems for Y2K. Advocacy believes that a waiver is in the public interest because it would allow small carriers to complete Y2K preparations, balance the TIB Order with other public policy goals, and implement the rules over time without unnecessary regulatory burden.

Respectfully submitted,

Eric E. Menge
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September 3, 1999