

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART & DISSENTING IN PART**

Re: Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses

Under Section 257, the Commission has an obligation to act in affirmative ways “to promote the policies and purposes of [the Communications] Act favoring a diversity of media voices.” The Commission is supposed to make efforts to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services.” I dissent in part to this Report, because it illustrates the Commission’s failure to promote opportunities for small businesses, as well as those owned by women and people of color, either as providers or consumers of broadband, telecommunications or media services. Notwithstanding the many inadequacies in this Report, I approve in part because herein we recommend to Congress the reinstatement of the tax incentive program for small businesses, particularly those owned by women and minorities.

As this Report reveals, the Commission has not done a good job in using the Office of Communications Business Opportunities (OCBO) as its “principal small business policy advisor.” During the three-year period covered in this report, the Commission has failed to charge OCBO - independently or in conjunction with a Bureau or Office - with developing or launching any significant policies, plans or programs to further the concerns of small businesses. As a consequence of the Commission’s misguided priorities, OCBO – which was formed specifically to address the concerns of small businesses and has very talented staff with subject matter expertise – has not played a meaningful role in the policy development process at the Commission.

These failings are particularly disappointing because small businesses play a driving role in creating jobs and developing new technologies. Over the past decade, small businesses have created two out of every three new jobs, employed forty percent of high tech workers, and produced far more patents than similarly focused large firms. Small businesses also purchase a massive amount of telecommunications services, spending approximately \$25 billion each year, according to a recent Wall Street Journal report.

Unfortunately, the FCC collects little reliable data about extent of broadband services available to small businesses in the U.S. or the more general state of competition among providers of telecommunications services for businesses. In a report released at the end of last year, the U.S. Government Accountability Office (GAO) recommended that the Commission collect additional data to monitor competition and to assess customer choice through, for example, price indices and availability of competitive alternatives. GAO found that “without more complete and reliable measures of competition, [the] FCC is unable to determine whether its deregulatory policies are achieving their goals.”

The lack of information about the small business market is particularly troubling because broadband creates economic opportunities that were previously unattainable. Broadband can

connect entrepreneurs to millions of new distant potential customers, facilitate telecommuting, and increase productivity. Much of the economic growth we have experienced in the last decade is attributable to productivity increases that have arisen from advances in technology, particularly in telecommunications. These new connections increase the efficiency of existing businesses and create new jobs by allowing new businesses to emerge, and spur new developments such as remote business locations and call centers.

The little data that we have suggests a less than rosy picture for small businesses. Many have only one choice of provider for broadband services, which deprives them of innovative alternatives and can result in higher prices. Even where there are competitive options, alternative providers rely heavily on inputs from incumbents. GAO found that competitive providers serve, on average, less than six percent of the buildings with demand for dedicated access, leaving 94 percent of the market served by only incumbent providers. These inputs are used not only by large businesses, but also by other communications providers, including independent wireless, satellite, and long distance providers that serve small businesses. It is noteworthy that the U.S. Small Business Administration Office of Advocacy recently commented that “[t]he combination of high prices and few alternatives creates an insurmountable burden to small carriers trying to conduct business in the telecommunications market.”

Regarding small business access to the provision of wireless services, this Order describes rules that have been adopted to clarify the award of “designated entity” (DE) status to eligible entities, additional eligibility requirements and new limitations on leasing for such designated entities. The narrow adjustments to the DE program that were adopted fell far short of making the meaningful modifications to the DE program that are necessary to provide opportunities for a diverse group of licensees. I think it is essential that we revisit our policies in this respect to ensure that all bidders, including small businesses have opportunities to bid, particularly where wholesale service is a compelling option for new and diverse providers.

Regarding media issues, the Commission has consistently failed to consider the impact of its policies on small businesses – particularly small women and minority owners of broadcast outlets, and small cable operators. While the Commission claims that it “fully recognizes the role that small communications businesses play in a robust American economy,” the Commission does not report the fact it has delayed meaningful relief to minority broadcast station owners and new entrants, and has repeatedly increased the regulatory burden on small cable businesses.

In *Prometheus v. FCC*, the Third Circuit took the Commission seriously to task for failing to consider the impact of potential rule changes on minority media ownership. The Court also faulted the Commission for sidelining our proposals of our own Diversity Advisory Committee and the Minority Media and Telecommunications Council to advance minority and disadvantaged businesses. The Court directed that “[t]he Commission’s rulemaking process in response to our remand order should address these proposals at the same time.” Yet, in its July 2006 Further Notice, the Commission could only muster up a few pat questions on this vital subject. On August 23, 2006, the Diversity and Competition Supporters – representing a broad array of minority and women’s organizations – rightly asked the Commission to seek further comment on the specific proposals. There the matter has sat for nearly a year before the Commission sought public comment. After a year of inaction, the Commission gave small,

women and minority businesses only 60 days to comment on dozens of proposals. This is hardly the conduct of a Commission that is serious about small businesses or fostering a diversity of media voices.

Regarding small cable operators, the Chairman proposed an order that would have required small operators with limited bandwidth capacity to carry three versions of same broadcast signals (triple carriage – analog, standard digital and high-definition digital). The proposed order also forbade small cable operators from using industry-accepted compression technologies to maximize their capacity. While the majority of the Commission was able to defeat such a burdensome proposal, this Commission, over my objection, refused to grant waivers to small cable system operators from the obligation to carry the analog and high-definition digital signals of all broadcast stations that are entitled to mandatory carriage.

Unlike the major multiple system operators and Local Exchange Carriers, small system operators face serious financial and technological resource constraints, and the Commission should have considered these limitations. We cannot achieve our goal of promoting rural broadband if the Commission forces small rural cable operators to use their limited capacity for uses other than what the market and their customers demand, including broadband. While I am pleased that the Order acknowledged that waivers may be necessary, it is not fair to ask these tiny rural systems to engage lawyers in Washington when a simple exemption would have sufficed.

Moreover, the Commission's approach to granting set-top box waivers was also troublesome. A cable operator should not have to be unprofitable or willing to meet a congressional deadline for over-the-air broadcasters to go all-digital, in order to qualify for a set-top box waiver. This uncertain, ad-hoc decision-making led to absurd results. For example, we gave a waiver to a new market entrant that is bigger than the entire cable industry and has over 300,000 subscribers, while smaller cable operators are required to deploy much more expensive set-top boxes to their customers.

For all these reasons, I approve in part and dissent in part from this Report.