

THE HON. ROBERT M. MCDOWELL

Questions for the Record from the May 15, 2015 House Committee on Energy and Commerce Hearing:
“FCC Reauthorization: Improving Commission Transparency Part II”
—The views expressed here are my own and do not necessarily represent the views of Wiley Rein or any of its clients—

MEMBER REQUESTS FOR THE RECORD

The Honorable Brett Guthrie

1. The FCC seems to have many, varying definitions of “small business.” Would small businesses benefit from the clarity of a more uniform definition? Would requiring the use of the definition of “small business concern” in the Small Business Act make more sense than the Commission’s ad hoc approach?

Thank you, Congressman, for the opportunity to offer my views on this important topic. As an FCC Commissioner from 2006 to 2013, I consistently called for greater awareness of the unique economic realities that face small and disadvantaged businesses in the communications industry. Navigating the ever expanding regulatory environment facing businesses today is a challenging task, even for the largest, most well-established companies. As a result, it is vital for regulators—and lawmakers—to recognize the particular needs of small businesses when crafting new, or revising old, laws and regulations. This includes taking every opportunity to simplify necessary regulations, when possible, while eliminating regulations that have proven to be outdated or ineffective.

Unnecessarily complicated regulations often disproportionately harm small businesses that lack the resources and experience required to ensure compliance and defend against government inquiries, justified or not. As a result, the Commission should consider the particular effect new regulations are likely to have on small businesses and focus on adopting simple rules that are straightforward and are applied in a consistent fashion. Adopting a universal definition of “small business” would undoubtedly simplify the Commission’s rules by providing clarity to entities that currently straddle the various definitional lines applicable to small to medium size, and disadvantaged businesses.

On the other hand, the clarity resulting from adopting a universal definition must be weighed against the costs associated with reducing the Commission’s ability to be flexible enough to tailor its rules for various unique situations. For example, there are compelling reasons to define a small or disadvantaged business differently when determining which entities qualify for competitive bidding credits, as opposed to crafting a definition in the context of exempting small businesses from various regulatory requirements. These types of entities have been in the news quite a bit recently. The need for flexibility to regulate in a manner that fits a particular issue or problem makes it challenging to craft a one-size-fits-all definition.

If the Commission were to adopt a universal definition, however, the term “small business concern” as defined in the Small Business Act could offer a useful starting point for discussions. The SBA’s focus on market power, as opposed to revenue, could provide the Commission with needed flexibility, while simplifying its regulations by replacing numerous “small business” classifications with a relatively straightforward and uniform definition.

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At the end of the day, different definitions can be useful given different contexts (e.g., media ownership, spectrum auctions, Universal Service subsidies, etc.). Nonetheless, relying on an ad hoc approach too much can produce inconsistent or arbitrary results. You are perceptive to identify this issue and consider different options. I would be delighted to work with you further on this matter.