Relieving Registration Burdens on Small Community-Based Businesses

Overview

- **Public Law**
  Section 404 of the Sarbanes-Oxley Act of 2002 (SOX) subjects small businesses to the reporting and disclosure requirements of Section 12(g) of the Securities Exchange Act of 1934 (the Exchange Act). After SOX enactment, Section 12(g) of the Exchange Act required registration with the Securities and Exchange Commission (SEC) for companies (other than certain kinds of banks) that have 500 or more shareholders and $10 million or more in total assets.

- In 2012, the Jumpstart Our Business Startups (JOBS) Act further amended the Exchange Act registration requirements. Specifically, the shareholder threshold for SEC registration was increased from 500 or more persons to either (1) 2,000 or more accredited persons, or (2) 500 or more persons who are "**NOT**" accredited investors. However, the JOBS Act also provided a special exemption for certain banks, increasing their threshold for registration to 2,000 shareholders regardless of "accreditation."

- Accredited investors are defined as shareholders that meet certain income levels or net worth; the current definition looks to shareholders having more than $200,000 in income ($300,000 if married) or personal net worth exceeding $1 million (excluding a personal residence).

Underlying Issues

- Although the JOBS Act sought to ease SEC reporting requirements, the registration thresholds still pose substantial challenges for small community-based businesses in the form of more expensive audits and SEC reporting requirements, especially upon certain triggering events like mergers and acquisitions or gifting and splitting of shares among families and other members of rural communities.

- Given that most shareholders in the case of rural small businesses are often community members and customers, it is unlikely that these companies will ever obtain 500 "non-accredited" (*i.e.*, high income and high net worth) shareholders. In effect, this means that any small rural business with 500 or more community-based shareholders must register. By comparison, the precedent set by the JOBS Act provided community-based banks in particular a statutory exemption from the 500-plus "non-accredited" investor registration threshold. There is therefore precedent for such a measure, and other small community-based businesses need and deserve similar relief.

- For small rural telcos in particular, the burdens of potential registration arising out of community ownership come atop already significant challenges in the form of telecommunications regulatory requirements and the cost-intensive business of deploying and operating advanced fiber optic networks in high-cost rural areas.

The Solution

- Level the playing field by amending Section 12(g)(1)(A) of the Exchange Act to grant small community-based businesses, including small rural community-based communications providers, the same exemption from the "non-accredited" shareholder trigger that exists today for banks in Section 12(g)(1)(B).

4121 Wilson Boulevard, Suite 1000 • Arlington, VA 22203-1801
Phone/703-351-2000 • Fax/703-351-2001 • www.ntca.org