

Advocacy Reinforces Concerns Over Federal Communications Commission's "Do-Not-Fax" Rule

On October 30, 2003, the Office of Advocacy (Advocacy) filed its reply with the Federal Communications Commission (FCC) to a letter in opposition to Advocacy's Petition for Reconsideration of the "do-not-fax" provisions of the FCC's do-not-call rule. A complete copy of Advocacy's reply may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- An individual small business owner filed a letter with the FCC criticizing Advocacy's petition as not reflecting the needs and desires of small businesses, overstating the burden of compliance with the fax restrictions, and favoring fax advertisers over small businesses.
- Advocacy's reply responded to questions and assertions in the opposition and clarified that Advocacy is concerned about the rule's potential restrictions on legitimate fax communications by small businesses and small organizations, not unsolicited "junk faxes."
- Advocacy explained its statutory authority to raise concerns regarding the impacts of the fax restrictions on small businesses and small organizations, as well as the scope of its outreach to elicit the views of small businesses and membership organizations on this issue. Advocacy reiterated its concerns regarding the FCC's failure to analyze the small entity impacts of the restrictions on unsolicited faxes – information Advocacy is now gathering on its own to assist the FCC. Advocacy encouraged the FCC to clarify what is and is not covered by the rule and to issue a small entity compliance guide well in advance the fax restrictions going into effect.
- Advocacy filed a Petition for Reconsideration on August 25, 2003 asking the FCC to reconsider the "do-not-fax" provisions of the "do-not-call" rule. Advocacy suggested ways that the FCC could lighten the burden on small entities, such as reinstating the "Established Business Relationship" and exempting non-profits, creating a presumption that membership in a trade association acts as consent, and clarifying the definition of an unsolicited commercial advertisement.
- Currently, the FCC has stayed the "do-not-fax" provisions of the rule until January 1, 2005. Advocacy's Petition urges the FCC to change permanently the "do-not-fax" provisions in light of the impact on small entities.
- The Regulatory Flexibility Act (RFA) and Executive Order (EO) 13272 require government agencies to thoroughly analyze their impact on small entities and consider less burdensome alternatives. Advocacy's petition was triggered by the FCC's failure to meet the requirements of the RFA and EO 13272.

For more information, visit Advocacy's web page at www.sba.gov/advo or contact Eric Menge at (202) 205-6533.