



# OFFICE OF ADVOCACY *FACTSHEET*

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## ***Advocacy Files Notice of Intent to File Brief in RFA Challenge of FCC's Number Portability Rules***

On February 13, 2004, the Office of Advocacy (Advocacy) filed a notice of intent as it prepared to file an *amicus curiae* (friend of the court) brief with the U.S. Court of Appeals for the D.C. Circuit in a small business challenge of a Federal Communications Commission (FCC) order. A complete copy of the notice of intent is at Advocacy's website, <http://www.sba.gov/advo/laws/comments/>.

- The small business petitioners—the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)—claim that the FCC did not comply with either the Administrative Procedure Act (APA) or the Regulatory Flexibility Act (RFA), which requires agencies to consider the impact on small business before imposing regulatory burdens.
- On January 23, 2003, the Cellular Telecommunications & Internet Association (CTIA) filed a petition for declaratory ruling with the FCC. CTIA asked the FCC to declare that wireline carriers have an obligation to port (transfer) telephone numbers to wireless carriers with service areas that overlap the wireline carrier's rate center, even when there is no point of interconnection (a physical point where the systems of two carriers are connected for the purpose of routing calls from one system to the other.)
- Number portability is the transfer of a telephone number from one carrier to another at a customer's request. Wireline carriers have numbering resources assigned to specific rate centers that cover small geographic areas, while wireless carriers serve customers from rate centers covering wider geographic areas, called service areas. The rate centers for wireless and wireline carriers do not always match.
- On November 10, 2003, the FCC granted CTIA's petition through a memorandum opinion and order (MO&O). The FCC stated that the order "clarified" an earlier final rule and was not a legislative rulemaking that required notice and comment under the APA. The FCC did not conduct an RFA analysis of the small business impacts.
- The order imposes two new requirements on small rural wireline carriers. First, it requires a wireline carrier to port numbers to wireless carriers with service areas that overlap the wireline carrier's rate center. Second, it requires number portability between wireline and wireless carriers even when the two carriers have not entered into an interconnection agreement.
- On December 15, 2003, NTCA and OPASTCO challenged the order on behalf of small rural wireline (local exchange) carriers. The petitioners claim the FCC order will have a significant economic impact on their small business members, as it requires hardware and software upgrades to the network, transport to the tandem switch where the small carrier links with the larger carrier (usually a Bell operating company), and toll costs across that other carrier's network to the wireless carrier's point of interconnection. The two associations estimate that the regulatory impact will be \$76,000 per carrier in initial costs and \$46,000 in recurring costs.
- Advocacy will reach out to the FCC to discuss alternative means to resolve the small business issues in this challenge while preparing to file in support of the small business petitioners.

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