

Advocacy Asks FCC to Grant Small Business Relief when Implementing Junk Fax Law

On January 18, 2006, the Office of Advocacy (Advocacy) filed a comment with the Federal Communications Commission (FCC) to discuss regulatory impacts and available alternatives in response to the FCC's proposed rule implementing the Junk Fax Prevention Act of 2005 (JFPA). The FCC acknowledged that this rule would have far-reaching impact on small businesses and asked for comment on a number of issues surrounding implementation of the JFPA. To assist the FCC in its analysis, Advocacy solicited input from small entities and prepared these comments. A complete copy of Advocacy's letter may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The FCC is seeking comment on how to implement the Junk Fax Prevention Act of 2005 which codified the exemption to the FCC's do-not-fax rules for unsolicited commercial faxes sent to recipients with whom a business has an Established Business Relationship (EBR). The proposed rule asks if the EBR should be limited, what criteria the opt-out notice on unsolicited commercial faxes should meet, and whether small business senders should be exempt from providing a cost-free mechanism for receiving do-not-fax requests.
- The Regulatory Flexibility Act and Executive Order 13272 require government agencies to analyze the impact of proposed and final rules on small entities and to consider less burdensome alternatives.
- The small-business size standard ordinarily is defined on an industry-by-industry basis. However, this is not practicable for the proposed rule because of its broad applicability across industry lines which would create confusion on the part of small businesses as to whether or not they are exempted from the rule. Advocacy recommended that the FCC adopt a size standard of 100 employees or fewer for this rulemaking.
- Advocacy recommended that the FCC not limit the EBR duration to 18 months following a purchase or transaction and three months after an inquiry as the necessary recordkeeping would be burdensome on small businesses. While small businesses track their transactions, many small businesses do not have systems in place to track inquiries by customers.
- Advocacy recommended that the FCC exempt small businesses from the requirement to provide a cost-free mechanism for recipients of unsolicited fax advertisements to send do-not-fax requests because it is economically burdensome. If the FCC decides that small business should not be exempt, Advocacy recommended that the FCC allow small businesses to use alternatives to toll-free numbers such as e-mail, Web-based systems, or the designation of a third party to receive do-not-fax requests.

For more information, visit Advocacy's website at <http://www.sba.gov/advo/> or contact Eric Menge at (202) 205-6533.