

Advocacy Gives FCC Recommendations On Junk Fax Law Based on Small Business Outreach

On March 13, 2006, the Office of Advocacy (Advocacy) met with officials from the Federal Communications Commission (FCC) to discuss the agency's implementation of the Junk Fax Prevention Act of 2005 (JFPA) and its implications under the Regulatory Flexibility Act. To assist the FCC in its analysis, Advocacy reached out to small entities and compiled a list of recommendations. The most important points are summarized below. A complete copy of Advocacy's letter may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- Advocacy's purpose in this rulemaking is to help the FCC restrict junk faxes which will save small businesses time and resources while imposing as few regulatory restrictions and costs as possible on small businesses that utilize legitimate fax communications.
- Small businesses send and receive faxes in the ordinary course of doing business. Any restriction on communications is an impediment to commerce which will have an economic cost for small businesses. In addition, small businesses often receive junk faxes and that these unwanted communications cost small businesses money to receive and print the faxes. These costs can be significant.
- Advocacy's position is consistent with our earlier filing, which recommended that the FCC (1) grant an exemption for small businesses from the requirement to provide a cost-free mechanism for recipients of unsolicited fax advertisements to send do-not-fax requests, (2) not establish a time limit on an established business relationship (EBR) at this time, and (3) allow 30 days to respond to a do-not-fax request.
- While the burden of proof for an EBR should be on the sender, the FCC should allow senders to rely on general records to prove an EBR and not require any particular form of recordkeeping. Since the senders would have the burden to prove an EBR, it will be in their interest to set up a system that is sufficient to prove an EBR exists but is not overly burdensome.
- Because there are many ways for a recipient to voluntarily provide a fax number in the context of an EBR, the FCC's rules should be flexible on this matter. The FCC should create a safe harbor for communications of fax numbers that would be presumed to be voluntary, such as business cards, letterhead, e-mail footers, advertisements, brochures, and Websites.
- The JFPA requires a "clear and conspicuous notice" that the fax recipient can opt out of receiving any more faxes from the sender. The FCC should adopt the same definition for "clear and conspicuous notice" that the FCC uses in its rules on mobile services commercial messages. This requires that the notice be clearly legible, use sufficiently large type, and be placed so as to be readily apparent to the recipient.

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