

Advocacy Urges FCC to Minimize Small Business Impacts of Fax Advertising Restrictions

On November 21, 2003, the Office of Advocacy (Advocacy) filed a letter with the Federal Communications Commission (FCC) on the economic impacts of the FCC's "Do-Not-Fax" provisions of the "Do-Not-Call" rules. This letter was the result of Advocacy's outreach to small businesses and other small entities, which included a roundtable discussion of the issues that the FCC should have considered in its regulatory flexibility analysis. A copy of Advocacy's letter may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The rule affects almost every small business in the country, and many industry representatives argued that their entire industry segment is covered by the rule. Home-based businesses, in particular, would be affected.
- A survey by the National Association of Wholesaler-Distributors revealed that its member companies expected to pay an average of \$22,500 to obtain consent forms and an average of \$20,000 for annual compliance. Other economic impacts identified included the costs of training a constantly changing work force, making multiple contacts to obtain signatures providing consent, and obtaining permission for each fax machine when the recipients change location frequently.
- Less burdensome alternatives offered for the FCC's consideration included restoring the Established Business Relationship (EBR) exemption; utilizing and enforcing opt-out clauses; making permission entity-based so that a single permission is needed per entity; allowing oral permission or requests to satisfy the requirements for prior consent; permitting voluntary membership in an organization to qualify as consent to receive faxes from the organization; and clarifying the FCC's definitions.
- Advocacy filed a Petition for Reconsideration on August 25, 2003, recommending that the FCC reduce the burden on small entities by reinstating the EBR 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 until January 1, 2005, pending FCC action on the Petition for Reconsideration.
- The Regulatory Flexibility Act (RFA) and Executive Order 13272 require agencies to analyze their regulatory 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.