



**OFFICE OF ADVOCACY
U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416**

May 14, 2003

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, DC 20554

RE: *Ex Parte* Presentation in a Non-Restricted Proceeding
Initial Regulatory Flexibility Analysis for Basic and Enhanced 911 Provision by
Currently Exempt Wireless and Wireline Services (CC Dkt. No. 94-102; IB Dkt. No. 99-
67; FCC 02-326)

Dear Mr. Chairman:

As part of its statutory duty to monitor and report on an agencies' compliance with the Regulatory Flexibility Act of 1980 ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),¹ the Office of Advocacy of the U.S. Small Business Administration ("Advocacy"), has reviewed the Federal Communications Commission's ("FCC" or "Commission") compliance with the RFA's requirements for the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.² The Office of Advocacy is an independent entity within the U.S. Small Business Administration ("SBA"), so the views expressed by the Office of Advocacy do not necessarily reflect the views of the SBA or the Administration.

In this rulemaking, the FCC seeks to determine whether it remains appropriate to continue to exempt a class of select wireless and wireline service providers from 911 and enhanced 911 regulations. Advocacy applauds the Commission's initial regulatory flexibility analysis in this proposed rule. The Commission did a thorough job reviewing the rule for small business impacts and presenting those impacts in a comprehensive and clear manner. The Commission also discussed several viable alternatives and addressed the benefits and limitations of each. Advocacy encourages the FCC to build upon the example set in this analysis and continue to consider and minimize the impact on small businesses in future rulemakings.

¹ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

² *In the Matter* for Basic and Enhanced 911 Provision by Currently Exempt Wireless and Wireline Services, *Further Notice of Proposed Rulemaking*, CC Dkt. No. 94-102; IB Dkt. No. 99-67; FCC 02-326 (rel. Dec. 20, 2002).

1. Advocacy Background

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305³ to represent the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for the receipt of complaints concerning the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.⁴ Advocacy also has a statutory duty to monitor and report to Congress on the Commission's compliance with the RFA.

On August 14, 2002, President George W. Bush signed Executive Order 13272 that requires federal agencies to implement policies protecting small businesses when writing new rules and regulations.⁵ This Executive Order authorizes Advocacy to provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget.⁶ It also requires agencies to give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Agencies are to include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, a response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁷

2. The FCC Does a Thorough Job Analyzing Compliance Requirements and Alternatives and Meets the Requirements of the RFA.

In this proposed rule, the FCC presented a thorough and well-developed Initial Regulatory Flexibility Analysis ("IRFA"). The Commission invested the time and effort to craft a regulatory analysis that satisfies the requirements of the RFA. Advocacy notes the FCC's consideration of small business issues in this rulemaking and encourages the FCC to follow the example set here in future rulemakings.

In this rulemaking, the Commission is seeking comment on whether providers of wireless and wireline services are within the scope of the Commission's 911 rules and whether they should be required to provide access to emergency services. The FCC proposes requiring compliance with the Commission's 911 rules based on (1) whether the service is comparable to traditional wireless or local telephone service, (2) whether customers expect to have 911 access, (3) whether the service competes with traditional wireless or local telephone service, and (4) whether it is feasible for the service to have 911.

In the IRFA, the FCC gives an excellent summary of the proposed rule and its objectives.⁸ More importantly, the Commission walks step-by-step through all the compliance burdens imposed by the proposed rule and lists each of the requirements individually.⁹ This manner of presentation helps to insure that agency addresses the small business impacts in the rulemaking. Also, when

³ Pub. L. No. 94-305 (codified as amended at 15 U.S.C. §§ 634 a-g, 637).

⁴ 15 U.S.C. § 634(c)(1)-(4).

⁵ Exec. Order. No. 13272 § 1, 67 Fed. Reg. 53,461 (2002).

⁶ *Id.* at § 2(c).

⁷ *Id.* at § 3(c).

⁸ NPRM at para. 128.

⁹ *Id.* at paras. 145-9.

addressing each of the compliance requirements, the FCC gives the paragraph references so that small businesses can easily find the requirement in the text of the proposed order. This format helps small businesses reviewing the IRFA. It also enables the small business to assess and review the FCC's analysis of the impact.

Lastly, the FCC's consideration of alternatives is meaningful.¹⁰ The Commission discusses several legitimate alternatives to the proposal that could reduce burdens on small businesses. By proposing viable alternatives, the Commission encourages small businesses to consider the various options and give the FCC quality feedback on which options are preferable for small businesses. Further, in its consideration of these alternatives in the IRFA, the agency states its statutory constraints and public interest considerations that limit its ability to create small business flexibilities. This discussion encourages small business commenters to keep in mind the FCC's limitations when commenting on the alternatives presented or recommending new ones.

3. Conclusion

Advocacy applauds the FCC's efforts on its RFA analysis in this proceeding. We encourage the FCC to use this IRFA as an example of a thorough and well-presented small business analysis in future rule-makings. Thank you for your consideration of these comments, and please do not hesitate to contact me or Eric Menge of my staff at (202) 205-6533 or eric.menge@sba.gov if you have questions, comments, or concerns.

Sincerely,

/s/ _____
Thomas M. Sullivan
Chief Counsel for Advocacy

/s/ _____
Eric E. Menge
Assistant Chief Counsel for Telecommunications

cc:

Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office of
Management and Budget

¹⁰ *Id.* at paras. 150-160.