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United States General Accounting Office
Washington, DC 20548

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July 11, 2002

The Honorable Ernest F. Hollings
Chairman
The Honorable John McCain
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable W.J. "Billy" Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: Federal Communications Commission: Order to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range; Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and in Re Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. in the 12.2-12.7 GHz Band

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "Order to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range; Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and in Re Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. in the 12.2-12.7 GHz Band" (FCC 02-116). We received the rule on June 27, 2002. It was published in the Federal Register as a final rule on June 26, 2002. 67 Fed. Reg. 43031.

The final rule establishes technical, service and licensing rules for Multichannel Video Distribution and Data Service in the 12 GHz band.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is John Anderson, Managing Director, Physical Infrastructure. Mr. Anderson can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Shellie Blakeney
Legal Advisor
Federal Communications
Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"ORDER TO PERMIT OPERATION OF NGSO FSS SYSTEMS CO-FREQUENCY
WITH GSO AND TERRESTRIAL SYSTEMS IN THE KU-BAND FREQUENCY
RANGE; AUTHORIZE SUBSIDIARY TERRESTRIAL USE OF THE 12.2-12.7 GHZ
BAND BY DIRECT BROADCAST SATELLITE LICENSEES AND
THEIR AFFILIATES; AND IN RE APPLICATIONS OF BROADWAVE USA,
PDC BROADBAND CORPORATION, AND SATELLITE RECEIVERS, LTD.
IN THE 12.2-12.7 GHZ BAND"
(FCC 02-116)

(i) Cost-benefit analysis

The FCC is not required to prepare and did not prepare a cost-benefit analysis for the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The FCC prepared both an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis in connection with the proposed rulemaking and the final rule, respectively.

The analyses comply with the requirements of the act, including the reasons and legal basis for the rule, a description and number of the small entities affected by the rule, and the steps taken to minimize the impacts on small entities.

In order to reduce the impact, the FCC has provided bidding credits for entrepreneurs, small businesses, and very small businesses and permitted partitioning of service areas to encourage participation by small businesses.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. Two proposed rulemakings were published in the Federal Register. 64 Fed. Reg. 7565, January 12, 1999, and 66 Fed. Reg. 30361, June 6, 2001. In response, the FCC received comments from 25 parties and reply comments from 17 parties.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. The preamble to the final rule contains the required information regarding the collections, including the estimated annual burden.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority of sections 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

Executive Order No. 12866

As an independent regulatory agency, the FCC is not subject to the review requirements of the order.