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January 10, 2005

The Honorable Ted Stevens
Chairman
The Honorable Daniel K. Inouye
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Joe Barton
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*

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 "Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets" (FCC 04-167, WT Docket No. 00-230). We received the rule on October 8, 2004. It was published in the Federal Register as a final rule on December 27, 2004. 69 Fed. Reg. 77522.

The final rule builds upon the policies adopted in 2003 to facilitate the ability of licensees in our Wireless Radio Services that hold "exclusive" authority to lease some or all of their spectrum usage rights to third parties and to streamline approval procedures for license assignments and transfers of control in these Wireless Radio Services. The rule adopts immediate processing procedures for certain classes of spectrum leasing arrangements and license transfers and assignments that do not raise potential public interest concerns. Also, it extends the spectrum leasing policies to additional services and adopts a new regulatory concept, the "private commons."

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 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 Patricia Dalton, Managing Director, Physical Infrastructure. Ms. Dalton can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: John Branscome
Legal Advisor/Chief, Wireless
Telecommunications Branch
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
"PROMOTING EFFICIENT USE OF SPECTRUM THROUGH
ELIMINATION OF BARRIERS TO THE
DEVELOPMENT OF SECONDARY MARKETS"
(FCC 04-167, WT DOCKET NO. 00-230)

(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 and final rules, respectively. Both analyses comply with the requirements of the Act. Among the steps taken to reduce the burden on small entities, the FCC permits all *de facto* transfer leases involving telecommunications services to proceed pursuant to the application and immediate grant procedures contained in the final rule. This should allow all entities, including small entities, to gain immediate access to spectrum to implement their business plans with reduced regulatory delay and transaction costs.

(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 published using the notice and comment procedures found at 5 U.S.C. 553. On November 25, 2003, the FCC published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 66232. In response, the FCC received 21 comments and 10 reply comments, which are discussed in the preamble to the final rule.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The FCC has submitted the required information to OMB for review and approval.

Statutory authorization for the rule

The final rule is promulgated pursuant to sections 1, 4(i), 5(c), 8, 9, 10, 301, 303(r), 308, 309, 310, 332, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155(c), 158, 159, 160, 301, 303(r), 308, 309, 310, 332, and 503.

Executive Order No. 12866

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