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January 18, 2008

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

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

Subject: *Federal Communications Commission: Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*

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 (Commission), entitled “Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments” (FCC 07-189). We received the rule on December 20, 2007. It was published in the *Federal Register* as a final rule on January 7, 2008. 73 Fed. Reg. 1080. The rule has a stated effective date of March 7, 2008.

The final rule prohibits the enforcement of existing exclusivity clauses and the execution of new exclusivity clauses in contracts between cable operators that provide video programming service and certain residential units. The types of units covered by this rule are multiple dwelling units such as apartment or condominium buildings and centrally managed real estate developments such as gated communities, mobile home parks, and garden apartments (collectively, MDUs). The Commission concludes that such exclusivity agreements harm competition, the provision of programming to MDU residents, and broadband development.

Enclosed is our assessment of the Commission’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 Commission complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. 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

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Thomas Horan
Chief of Staff, Media Bureau
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"EXCLUSIVE SERVICE CONTRACTS FOR PROVISION OF
VIDEO SERVICES IN MULTIPLE DWELLING UNITS AND
OTHER REAL ESTATE DEVELOPMENTS"
(FCC 07-189)

(i) Cost-benefit analysis

The Federal Communications Commission (Commission) 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 Commission prepared a Final Regulatory Flexibility Analysis of the possible significant economic impact on small entities.

(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 Commission 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.

On March 27, 2007, the Commission published a Notice of Proposed Rulemaking for this final rule in the *Federal Communications Commission Record*. 22 FCC Rcd. 5935. In the final rule, the Commission responded to the comments received in response to the proposed rule. 73 Fed. Reg. 1082–88.

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

This final rule does not contain any new or modified information collection requirements subject to the Act.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to the authority in sections 628(b), 628(c)(1), and 628(j) of the Communications Act of 1934. 47 U.S.C. §§ 548(b), 548 (c)(1), and 548(j).

Executive Order No. 12,866

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