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United States General Accounting Office  
Washington, DC 20548

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B-293425

December 12, 2003

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
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: 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 03-113). We received the rule on December 4, 2003. It was published in the Federal Register as a final rule on November 25, 2003. 68 Fed. Reg. 66252.

The final rule promotes wider use of spectrum leasing arrangements by facilitating the ability of licensees in FCC's Wireless Radio Services that hold "exclusive" authority to lease some or all of their spectrum usage rights to third parties for any amount of spectrum and in any geographic area encompassed by the license, for any period of time within the term of the license. The rule also adopts streamlined approval procedures for license assignments and transfers of control in these Wireless Radio Services.

We note that the final rule has an announced earliest effective date of January 26, 2004, with certain provisions of the rule becoming effective upon approval of the information collections by the Office of Management and Budget. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is

later. While the rule was published on November 25, 2003, Congress did not receive it until December 4, 2003. Therefore, the portion of the rule that becomes effective on January 26, 2004, does not meet the required 60-day delay for congressional review.

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 Michael Gryszkowiec, Managing Director, Physical Infrastructure. Mr. Gryszkowiec can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Uzoma Onyeije  
Legal Advisor/Chief, Wireless  
Telecommunications Branch  
Federal Communications Commission

ENCLOSURE

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 03-113)

(i) Cost-benefit analysis

The FCC's submission to our Office stated that it was not required to prepare and did not prepare a cost-benefit analysis of the rule.

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

The FCC prepared both Initial and Final Regulatory Flexibility Analyses, which were incorporated into the proposed and final rules, respectively. The analyses contain the required information, including descriptions and estimates of the number of small entities in the various segments of the industry and the steps taken to reduce the burden on the small entities. FCC points out that under the rule all entities, including small entities, will be governed by reduced filing requirements and reduced regulatory uncertainty.

(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 title II of 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. On December 26, 2000, the FCC published a Notice of Proposed Rulemaking in the Federal Register. 65 Fed. Reg. 81475. The FCC received 37 comments and 21 reply comments in response to the notice.

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

The final rule contains a new information collection, which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

FCC has submitted the required information to OMB including the estimated annual burden. FCC estimates that the annual number of respondents will be 71,262 with an estimated burden time of 9 hours per response for a total cost burden of \$117,088,018.33.

#### Statutory authorization for the rule

The final rule was promulgated under the authority contained at sections 1, 4(i), 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), 158, 161, 301, 303(r), 308, 309, 310, 332, and 503.

#### Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.