



Office of the General Counsel

B-275973

April 9, 1997

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

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Federal Communications Commission: Broadcast Services; Television
Broadcast Stations; TV Transmission Standards

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 "Broadcast Services; Television Broadcast Stations; TV Transmission Standards" (MM Docket No. 87-268, FCC 96-493). We received the rule on January 14, 1997. It was published in the Federal Register as a final rule on March 25, 1997. 62 Fed. Reg. 14006.

The rule adds a transmission standard for digital broadcast television signals to the FCC's Rules so as to provide the certainty broadcasters, equipment manufacturers, and consumers need to invest in the new technology. The rule does *not* mandate conversion to digital television, but it does require that digital signals that are transmitted conform to certain specified standards.

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 Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John Anderson, Director of Transportation Issues. Mr. Anderson can be reached at (202) 512-2834.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Andrew S. Fishel
Managing Director
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
"BROADCAST SERVICES; TELEVISION BROADCAST STATIONS;
TV TRANSMISSION STANDARDS"
(MM Docket No. 87-268, FCC 96-493)

(i) Cost-benefit analysis

The FCC's submission to GAO 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

Section 603 - Initial Regulatory Flexibility Analysis

The FCC published the Initial Regulatory Flexibility Analysis (IRFA) in its Fifth Further Notice of Proposed Rulemaking, 61 Fed. Reg. 26864, May 29, 1996. As required by § 603, the IRFA describes the reasons for the proposed action, its objectives, and its legal basis. The IRFA also describes the potential small entities affected--primarily UHF and VHF commercial and educational television stations, translator stations, and low power UHF and VHF television stations. The analysis states that there are no reporting, recordkeeping, or other compliance requirements in phase of the proceeding existing at the time, and that there are no other federal rules that would overlap, duplicate, or conflict with the proposed rule. Finally, the analysis notes that the purpose of the proceeding is to examine what, if any, transmission standard for digital television should be adopted and that it hoped to receive comments from all of the industries affected so that the FCC would be better able to minimize any negative impact small entities might face as a result of its decisions.

Section 604 - Final Regulatory Flexibility Analysis

The preamble to the final rule contains the full text of the Final Regulatory Flexibility Analysis. The analysis complies with the requirements of §604(a).

The analysis indicates that no comments were received specifically in response to the IRFA, and that no comments were addressed specifically to small business issues. The FCC notes that it believes the Small Business Administration's definition of a small business as it is applied to the broadcast industry greatly

overstates the number of stations that are small businesses. But as the FCC did not propose an alternate definition in the IRFA, it states that it would utilize the SBA's definition while reserving the right to adopt a more suitable one in the future. Using 1992 Census data for this industry as well as other affected industries--low power stations, TV translators, television equipment manufacturers, household/consumer television manufacturers, and computer manufacturers, the FCC concludes that the following number of small entities will be affected:

| | |
|--|-------------------|
| TV broadcasters | 1194 ¹ |
| LPTV stations | 1921 |
| TV Equipment Manufacturers | 778 ¹ |
| Household/Consumer TV Equipment Manufacturers | 386 ¹ |
| Computer Manufacturers | 659 ¹ |

The FCC states that the action does not impose additional burdens on small entities because it does not mandate conversion to digital television; it only requires digital television signals that are transmitted to conform to certain standards.

(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 FCC promulgated this rule under the notice and comment procedures of 5 U.S.C. § 553. The proceeding began in 1987 as noted in footnote 1 of 62 Fed. Reg. 14006, March 25, 1997. However, the Fifth Further Notice of Proposed Rulemaking, 61 Fed. Reg. 26864, May 29, 1996, contains the digital television standard recommended for adoption by the FCC with the request for comments as well as for comments on alternative approaches. The FCC received comments from all of the affected industries and public interest groups, all of which are summarized in the preamble to the final rule. After considering the comments, the FCC adopted a rule that requires transmission of digital TV signals to comply with the digital television standard proposed except for the video format layer.

¹Approximate number

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

The final rule contains no new information collections subject to the Office of Management and Budget's approval under the Paperwork Reduction Act.

Statutory authorization for the rule

The rule is authorized by Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r).

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of E.O. 12866.