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Office of the General Counsel

B-272939

August 8, 1996

The Honorable Larry Pressler  
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: Interconnection and Resale  
Obligations Pertaining to Commercial Mobile Radio Services

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, entitled "First Report and Order: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services" (FCC-96-263). We received the rule on July 23, 1996. It was published in the Federal Register as a final rule on July 24, 1996. 61 Fed. Reg. 38399.

In this First Report and Order, the Commission adopts a transitional rule requiring all cellular and broadband personal communications services and certain specialized mobile radio providers to permit unlimited resale of their services. The First Report and Order also eliminates an exception to an existing rule which permitted cellular licensees under some circumstances to restrict resale by their licensed cellular competitors. It also provides that the resale rule will sunset 5 years after the last group of licenses for currently allotted personal communications services spectrum is awarded (expected to occur within a year).

According to the Commission, the purpose of the above actions is to make the mass market for two-way switched voice mobile services more competitive while that market is in a transitional state as well as to encourage new entrants into the market by allowing them to resell their competitors' services while they build out their networks.

Enclosed is our assessment of the Federal Communications Commission's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to this First Report and Order. Our review indicates that the Federal Communications Commission complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John Anderson, Director of Transportation and Telecommunications 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  
"FIRST REPORT AND ORDER: INTERCONNECTION AND RESALE OBLIGATIONS  
PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES"  
(FCC-96-263)

(i) Cost-benefit analysis

The Commission stated in its submission to us 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 Federal Communications Commission initiated this proceeding with a Notice of Proposed Rulemaking and Notice of Inquiry that addressed a number of commercial mobile radio services regulatory issues. (Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, 9 FCC Rcd 5408 (1994)). The Commission subsequently modified its proposal regarding resale in a Second Notice of Proposed Rulemaking (Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, 10 FCC Rcd 10666 (1995)).

In both notices, the Commission prepared and published an Initial Regulatory Flexibility Analysis and invited written public comments on the proposed rulemaking, including comments on the initial regulatory flexibility analysis.

The analysis included in the proposed rulemaking provides the information required by sections 603(b)(1) and (2). It describes the reasons for the proposed agency action and its objectives and legal basis. The information required by sections 603(b)(3) and (4) concerning the estimate of the classes of small entities subject to the Report and Order and the projected reporting, recordkeeping and other compliance requirements of the proposed rule is also included. In accordance with section 605(b)(5), the Commission notes that the proposed Rule and Order does not duplicate, overlap or conflict with any other relevant federal rule.

Finally, the Commission solicited comments on a variety of alternatives regarding interconnection, roaming and resale obligations for commercial mobile radio service providers in compliance with section 603(c).

## Section 604: Final Regulatory Flexibility Analysis

The Supplementary Information published in the Federal Register includes the full text of the Commission's Final Regulatory Flexibility Analysis. 61 Fed. Reg. 38399. This analysis includes information required by section 604 including a description of the need for and purpose of this Report and Order and a discussion of comments received in regard to the Initial Regulatory Flexibility Analysis.

Although no comments were filed in direct response to the initial analysis, the Commission stated that some general comments related to issues that could affect small entities. The Commission discussed these comments in its final analysis and concluded that the comments were not well-founded.

The analysis further describes the small entities affected by the Report and Order; summarizes the projected reporting, recordkeeping and other compliance requirements; and describes the steps taken to minimize the economic impact on small businesses.

Finally, the analysis discusses several significant alternatives that were considered and rejected by the Commission, including expanding the universe of providers covered by the rule, more narrowly defining the universe of providers, and continuing the resale rule indefinitely.

We have confirmed that copies of both the Initial and the Final Regulatory Flexibility Analyses were provided to the Chief Counsel for Advocacy at the Small Business Administration as required by section 605.

## Section 607: Preparation of analysis

The Commission's analysis addressed the effects of the rule on small entities in a general manner, consistent with the requirements of section 607. It also points out that the rule imposes no affirmative compliance actions by any entities to which it applies. Rather, the rule operates in a manner that prohibits restrictions on the resale of service.

## Section 609: Participation by small entities

The Commission offered the opportunity to comment on both the initial and the second proposed rule and order to any interested parties, including small entities. The Commission's submission to GAO did not highlight any other actions taken to encourage small entity participation in the rulemaking process.

(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 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 Commission promulgated this rule under the notice and comment procedures of 5 U.S.C. § 553. An initial notice of proposed rulemaking was released on July 1, 1994 (9 FCC Rcd 5408) and a second notice of proposed rulemaking was released on April 20, 1995 (10 FCC Rcd 10666). Summaries of the notices of these proposed rulemakings were published in the Federal Register. (See 59 Fed. Reg. 35664 and 60 Fed. Reg. 20949). Fifty-one parties filed comments and 34 parties filed replies in response to comments. The Commission indicates that it gave full consideration to the comments filed by the parties. A detailed discussion of the Commission's consideration of these comments is considered in the full text of the Report and Order.

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

The rule does not impose information collection requirements subject to the Act.

Statutory authorization for the rule

Authorization for this rulemaking is contained in sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 303(r), 309, 332, and 403.

The Commission did not identify any other statutes or executive orders imposing requirements relevant to the Report and Order.