



**United States
General Accounting Office
Washington, D.C. 20548**

Office of the General Counsel

B-278832

December 22, 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: Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996

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 "Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996" (WT Docket No. 96-162; FCC 97-352). We received the rule on December 11, 1997. It was published in the Federal Register as a final rule on December 3, 1997. 62 Fed. Reg. 63864.

In the final rule, the FCC modifies the current structural separation requirement for the provision of cellular service by the Bell Operating Companies and adopts a new requirement that all incumbent local exchange carriers provide in-region broadband commercial mobile radio service (CMRS), including cellular services, through a CMRS affiliate.

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 Vickers, Assistant General Counsel, at (202) 512-8210. 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. Peter W. Herrick
AMD-Performance Evaluation and
Records Management
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
"COMPETITIVE SERVICE SAFEGUARDS FOR LOCAL EXCHANGE CARRIER
PROVISION OF COMMERCIAL MOBILE RADIO SERVICES AND
IMPLEMENTATION OF SECTION 601(d) OF THE
TELECOMMUNICATIONS ACT OF 1996"
(WT Docket No. 96-162; FCC 97-352)

(i) Cost-benefit analysis

The FCC, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of 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, which appeared in the preambles to the proposed and final rules, respectively.

The analyses describe the reason for the rule and the legal basis for it. They also include descriptions and estimates of the number of small entities affected by the rule; discussions of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities.

In the Final Regulatory Flexibility Analysis, the FCC points out that in an effort to minimize the burden on small entities, it has exempted rural telephone companies from the separate affiliate requirement. Also, it is allowing incumbent local exchange carriers with fewer than 2 percent of the nation's subscriber lines to petition the FCC for suspension or modification of the separate affiliate requirement.

(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 in 5 U.S.C. § 553. On September 3, 1996, the FCC published in the Federal Register a notice of proposed rulemaking. 61 Fed. Reg. 46420. In response, the FCC received 20 initial comments and 13 reply comments. The comments, as well as the actions taken as a result of the comments, are discussed in the preamble to the final rule.

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

The final rule contains a modified information collection requirement that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The FCC has submitted the request for approval on an emergency basis to OMB. The total annual burden hours imposed by the collection is estimated to be 116,456 with a total respondent cost of \$1,003,000.

Statutory authorization for the rule

The final rule was issued pursuant to the authority contained in sections 4(i), 303(r), 309(c), 309(j), and 332 of the Communications Act, as amended. 47 U.S.C. §§ 154(i), 303(r), 309(c), 309(j), and 332.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.