



Office of the General Counsel

B-281424

November 16, 1998

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: The Development of Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service

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 "The Development of Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service" (WT Docket No. 96-86; FCC 98-191). We received the rule on October 26, 1998. It was published in the Federal Register as a final rule on November 2, 1998. 63 Fed. Reg. 58645.

The FCC's final rule establishes a band plan and adopts service rules to begin the process of assigning licenses for public safety stations to operate in the newly reallocated spectrum of 746-776 and 794-806 MHz. The rule also designates a portion of the 700 MHz spectrum to permit different governmental agencies to communicate with each other (interoperability) and adopts technical specifications necessary to enhance spectrum efficiency, promote nationwide interoperability, and minimize harmful interference.

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 Judy England-Joseph, Director for Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Kathy Fagan
AMD-Performance Evaluation
and Records
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
"THE DEVELOPMENT OF TECHNICAL AND SPECTRUM REQUIREMENTS
FOR MEETING FEDERAL, STATE AND LOCAL PUBLIC SAFETY AGENCY
COMMUNICATION REQUIREMENTS THROUGH THE YEAR 2010,
ESTABLISHMENT OF RULES AND REQUIREMENTS
FOR PRIORITY ACCESS SERVICE"
(WT Docket No. 96-86; FCC 98-191)

(i) Cost-benefit analysis

The FCC's submission to us 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 initial regulatory flexibility analysis (IRFA) was incorporated in the notice of proposed rulemaking, 61 Fed. Reg. 25185, May 20, 1996. The FCC sought comments on the proposed rulemaking, including comments on the initial regulatory flexibility analysis.

The IRFA provides the information required by paragraphs 603(b)(1), (b)(2), (b)(3), and (b)(4). It describes the reasons for the proposed agency action; its objectives; the legal basis; and the reporting, recordkeeping, and other compliance requirements of the proposed rule. In addition, in accordance with 603(b)(5), the FCC notes that there are no federal rules that may duplicate, overlap, or conflict with the proposed rule.

The rule incorporates the Final Regulatory Flexibility Analysis (RFA) consistent with the requirements of 5 U.S.C. § 604. The analysis notes that the small entities affected include approximately 81,600 small governmental entities, six radio and television equipment manufacturers, as well as television stations, TV translator stations, and low-power TV stations. The FCC satisfies the requirements of section 604(a). It describes the need for and objective of the final rule. It notes that no significant issues were raised by public comments in response to the IRFA. The Commission notes the steps it has taken to minimize the 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 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. A notice of proposed rulemaking was published on May 20, 1996, 61 Fed. Reg. 25185. The FCC received comments in response to the notice, and in its report indicates that it gave full consideration to the comments filed by the interested parties.

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

The FCC requests comments on the proposed and continuing information collection requirements for the rule, noting that it may not conduct a collection of information for those information collection requirements without a valid Office of Management and Budget (OMB) control number¹ which has not yet been obtained.

Statutory authorization for the rule

The authority for this rule is stated to be 47 U.S.C. §§ 154(i), 302, 303(f) and (r), 332, and 337.

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.

¹All of the forms listed contain OMB approval numbers.