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September 12, 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: Flexible Service Offerings in the
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 "Flexible Service Offerings in the Commercial Mobile Radio Services" (WT Docket No. 96-6). We received the rule on August 21, 1996. It was published in the Federal Register as a final rule on August 29, 1996. 61 Fed. Reg. 45336.

Enclosed is our assessment of the Federal Communications Commission's (FCC) compliance with the procedural steps required by sections 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.

In its notice of proposed rulemaking, 61 Fed. Reg. 6189, February 16, 1996, the FCC sought comments on proposals for expanding permitted offerings of fixed wireless services by Commercial Mobile Radio Service (CMRS) providers, as well as comments in connection with the regulatory treatment for such services. The Executive Summary indicates comments received in response to the proposed rulemaking provided strong support for allowing the provision of fixed wireless

services by the licensees operating on the CMRS bands. The final rule amends the FCC rules to allow providers of narrowband and broadband CMRS services to offer fixed wireless services (excluding broadcast) on their assigned spectrum on a co-primary basis with mobile services.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel for Operations, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John Anderson, Director, Transportation and Telecommunications Issues. Mr. Anderson can be reached at (202) 512-8234.

Robert P. Murphy
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Enclosure

cc: Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission

ANALYSIS UNDER 5 U.S.C. §§ 801(A)(i)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"FLEXIBLE SERVICE OFFERINGS IN THE COMMERCIAL MOBILE RADIO
SERVICES"
(WT Docket No. 96-6)

(i) Cost-benefit analysis

The Commission indicated in its submission that it was not required to 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

Pursuant to section 603 of the Act, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in its Notice of Proposed Rulemaking, and written comments were requested. The preamble to the rule states that no comments were received specifically in response to the IRFA, but that issues were raised that might affect small business entities. In particular, a small business commenter argued that the proposed flexibility in the use of the CMRS bands not be extended to cellular providers initially in order to give Personal Communications Service (PCS) licensees an opportunity to establish themselves. The Commission also reports that it forwarded a copy of its initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration (SBA) as required by the Act.

Section 604 Final Regulatory Flexibility Analysis

The Commission prepared a Final Regulatory Flexibility Analysis pursuant to section 604. That analysis notes that the rule will carry out the Congress' intent to establish a consistent regulatory framework for all commercial mobile radio services and that the rule will assist in the development of competition between wireless and wireline services for the benefit of consumers.

The analysis notes that the rulemaking applies to providers of cellular, narrowband and broadband PCS, CMRS, specialized mobile radio services, CMRS paging commercial 220 MHz services, and for-profit interconnected business radio services. Each category of services was analyzed separately.

Cellular. In absence of its own standards, the Commission defined small business with respect to cellular services by utilizing the SBA definition for radiotelephone companies, e.g., an entity employing less than 1,500 persons. Because of the absence of meaningful data concerning the number of entities which are small, the Commission used the 1992 Census of Transportation, Communications and Utilities conducted by the Bureau of the Census as the most recent information available. That census indicated that only 12 of the 1,178 radiotelephone firms had 1,000 or more employees. That data does not, however, indicate the number of cellular providers among the 1,178 firms. Based on the above, the FCC concluded that for the purpose of the final regulatory flexibility analysis, all cellular licensees are small businesses as defined by the SBA.

PCS. The FCC (with the approval of the SBA) has defined small business in this category to mean businesses who have gross revenues not to exceed \$40 million per year for the prior 3 calendar years. Broadband PCS licenses were auctioned for Blocks A,B, and C. No auction has been held for blocks D, E and F.

The FCC asserts that it has insufficient information upon which to determine whether any small businesses within the SBA-approved definition were successful bidders for blocks A and B. For block C, the FCC estimates that 89 of the 90 non-defaulting bidders are small businesses.

For blocks D, E, and F, the FCC has switched from the \$40 million criteria to the under 1,500 employee category. Given that nearly all radiotelephone companies have less than 1,500 employees, the FCC concludes that all of the 1,479 licenses for these blocks will be awarded to small businesses. Because of a similar lack of meaningful data, the Commission has concluded that all of the 30 regional licenses for narrowband PCS and all of the 11 licenses for narrowband nationwide PCS licenses have been awarded to small business.

SMR. The FCC has created two tiers of small business for this service with the approval of the SBA. Firms with not more than \$3 million gross revenue for each of the three preceding calendar years are categorized as very small; with not more than \$15 million for the same period are small. According to the analysis, 60 winning bidders for the 900 MHz licenses qualify as small entities (no breakdown of small vs. very small). There has been no auction for the 800 MHz licenses.

Interconnected business services. According to the FCC, there is no meaningful data as to the number of for-profit interconnected business service (IBS) licensees that are small business, although the Commission concludes that all of the current license holders are small based on the 1,500 employee SBA criteria. The FCC notes that while there are in excess of 13,000 for-profit IBS licenses, a single licensee may hold multiple licenses so that it is not possible to determine the actual number of individual licensees for the service.

The analysis concludes that the rules do not impose additional reporting, record keeping, or other compliance requirements.

Section 605: Avoidance of duplicative or unnecessary analysis

The Commission did not invoke any of the exemptions or special procedures authorized by section 605 in preparing its regulatory flexibility analysis.

Section 607: Preparation of Analysis

Under section 607, the Commission's submission does not specifically indicate the potential economic impact on the small entities affected. However, the regulatory flexibility analysis indicates that the rule will benefit all CMRS small business licensees by providing them greater flexibility to determine which service they will provide to the public.

Section 609: Participation by small entities

Based on the information before us, it appears that there were no special efforts made by the Commission to involve small entities in the rulemaking process, other than the actions required by 5 U.S.C. § 553.

(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 rule was promulgated through the general notice of proposed rulemaking procedures of the Act, 5 U.S.C. § 553. The Commission afforded interested persons the opportunity to comment on the proposed rule, and the Commission's Report and Order addresses these comments.

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

The rule does not contain either a proposed or modified information collection.

Statutory authorization for the rule

The rules are promulgated with the authority provided in the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 332(a), and (c).

Executive Order No. 12866

As an independent regulatory agency as defined in 44 U.S.C. § 3502(10), the FCC is not subject to Executive Order No. 12866.

The Commission did not identify any other statutes or Executive Orders imposing requirements relevant to the rule.