



Office of the General Counsel

B-276658

April 15, 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: Provision for the Use of the
220-222 MHz Band by Private Land Mobile Radio Service; Final Rule

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 "Provision for the Use of the 220-222 MHz Band by Private Land Mobile Radio Service; Final Rule and Proposed Rule" (PR Docket No. 89-552; GN Docket No. 93-252; PP Docket No. 93-253; FCC 97-57). We received the rule on April 1, 1997. It was published in the Federal Register as a final rule on April 3, 1997. 62 Fed. Reg. 15978.

The final rule will govern the future operation and licensing of the 220-222 MHz band as part of the FCC's implementation of the regulatory framework for mobile radio services enacted by Congress in section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, which amended section 3(n) and 332 of the Communications Act of 1934.

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: 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
"PROVISION FOR THE USE OF THE 220-222 MHZ BAND
BY PRIVATE LAND MOBILE RADIO SERVICE; FINAL RULE"
(PR Docket No. 89-552; GN Docket No. 93-252;
PP Docket No. 93-253; FCC 97-57)

(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 an Initial Regulatory Flexibility Analysis in connection with the proposed rule and published it in the proposed rule's preamble. 60 Fed. Reg. 46565.

The preamble to the final rule contains the Final Regulatory Flexibility Analysis. 62 Fed. Reg. 15984. The analysis describes the reason for the final rule and the legal basis for it. The analysis also includes descriptions and estimates of the number of small entities affected by the final rule; a discussion of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities. These include the adoption of a two-tiered definition of small entities which allows greater flexibility for qualifying small businesses through varying bidding credits. Alternatives which were considered and either accepted or rejected and the reasons why such actions were taken are also discussed.

The analysis notes that no comments were received specifically addressing the Initial Regulatory Flexibility Analysis, but the final analysis discusses general comments received which could have an 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 final rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. On September 7, 1995, the FCC published in the Federal Register a Notice of Proposed Rulemaking and requested comments on the proposed rule. 60 Fed. Reg. 46564.

The preamble to the final rule discusses the comments received and any changes the FCC made to the proposed rule as a result of the comments. It also states the reasons why it did not make changes suggested by commenters.

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

The final rule contains an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. In the preamble to the final rule, the FCC explains the need for the information and the burden estimate related to the collection. It is estimated that the collection of the information which will be used by the FCC to verify licensee compliance with the FCC's rules and regulations and to ensure the integrity of the 220 MHz service will result in 176,200 burden hours annually.

The FCC invites comments on the information collection, including the necessity of the collection and the accuracy of the burden estimate, to be sent to the FCC and to OMB. The information collection will not have to be complied with until OMB approves the collection and issues an OMB control number.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 4, 302, 303, 307, 309, and 332 of the Communications Act of 1934 (47 U.S.C. §§ 154, 302, 303, 307, 309, 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.

The Commission did not identify any other statutes or executive orders imposing requirements on the rulemaking.