



---

Office of the General Counsel

B-279213

February 23, 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: Service and Auction Rules for the  
38.6-40.0 GHz Frequency Band

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 "Service and Auction Rules for the 38.6-40.0 GHz Frequency Band" (ET Docket No. 95-183; PP Docket No. 93-253; FCC 97-391). We received the rule on February 6, 1998. It was published in the Federal Register as a final rule on February 6, 1998. 63 Fed. Reg. 6079.

The final rule amends the FCC's rules to facilitate more effective use of the 39 GHz band by implementing a number of improvements, such as licensing by Basic Trading Areas and employing competitive bidding procedures as a means for choosing among mutually exclusive license applicants. In addition, the regulatory framework for the 39 GHz band is expanded to include service rules for mobile operations which, in the view of the FCC, will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service.

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: Kathy Fagan  
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  
"SERVICE AND AUCTION RULES FOR  
THE 38.6-40.0 GHZ FREQUENCY BAND"  
(ET Docket No. 95-183; PP Docket No. 93-253; FCC 97-391)

(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 in connection with the proposed and final rules, respectively.

In the Final Regulatory Flexibility Analysis, which appears in the preamble to the final rule, the FCC describes the reason for the rule and the legal basis for it. It also includes a description of the number of small entities affected by the rule; a discussion of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities.

Among the steps taken by the FCC to minimize the economic impact on small entities, small businesses with revenues of not more than \$40 million are eligible for a 25-percent bidding credit and small businesses with average annual gross revenues of not more than \$15 million are eligible for a 35-percent bidding credit.

(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 contained in 5 U.S.C. § 553. The FCC published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on January 26, 1996 (61 Fed. Reg. 2465). The FCC received 35 comments and 17 reply comments in response to the NPRM to which it responds in the preamble to the final rule.

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

The final rule contains information collections which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

The preamble to the proposed rule contained the information required under the Paperwork Reduction Act concerning the collections, including the needs and uses of the requirements, the number of estimated respondents, and the total annual burden hours.

The preamble, at 61 Fed. Reg. 2466, discusses the four collections, which include certification of a minimum number of installed and operating microwave links and the maintenance of a computer-readable database.

Statutory authorization for the rule

The final rule is issued pursuant to the authority in sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 42 U.S.C. §§ 154(i), 257, 303(r), and 309(j).

Executive Order No. 12866

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