



Office of the General Counsel

B-274381

September 13, 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: Redesignating the 27.5-29.5 GHz Frequency Band, Reallocating the 29.5-30.0 GHz Frequency Band, and Establishing Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Federal Communications Commission (FCC), entitled "Redesignating the 27.5-29.5 GHz Frequency Band, Reallocating the 29.5-30.0 GHz Frequency Band, and Establishing Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services" (CC Docket 92-297). We received the rule on August 29, 1996. It was published in the Federal Register as a final rule on August 28, 1996. 61 Fed. Reg. 44177.

Enclosed is our assessment of the FCC's 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.

The rule provides for the development of the "28 GHz Band" for the use of various wireless systems thus clearing the way for licensing Local Multipoint Distribution Service (LMDS) providers, Fixed Satellite Service (FSS) Systems, and feeder links

for certain Mobile Satellite Service (MSS) systems. The FCC asserts that commercialization of this portion of the spectrum will enable consumers to receive emerging domestic and global technologies via multiple service providers, with the expectation that competitive market-driven processes will determine which of the services succeed.

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 John Anderson, Director, Transportation and Telecommunications Issues. Mr. Anderson can be reached at (202) 512-8234.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. 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
"REDESIGNATING THE 27.5-29.5 GHZ FREQUENCY BAND, REALLOCATING THE
29.5-30.0 GHZ FREQUENCY BAND, AND ESTABLISHING RULES AND POLICIES
FOR LOCAL MULTIPOINT DISTRIBUTION SERVICE AND FOR FIXED SATELLITE
SERVICES"
(CC Docket 92-297)

(i) Cost-benefit analysis

The Commission is not required to prepare a cost-benefit analysis of the rule and did not do so.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

Section 603 and 604 Initial and Final Regulatory Flexibility Analysis

Pursuant to section 603 of the Act, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Third Notice of Proposed Rulemaking, 60 Fed. Reg. 43470, August 23, 1995, and written comments were requested. No comments were received specifically in response to the IRFA. However, the only licensee in the band a Local Multipoint Distribution Service (LMDS) small entity believed that the plan proposed in the Third Notice accommodated all competing interests for the spectrum band. An FCC representative advised that the IRFA was sent to the Chief Counsel for Advocacy for the Small Business Administration (SBA) and that the SBA did submit comments.

The Commission's analysis of the number of small entities¹ to which the rule will be applicable lacks any meaningful data because that data is non-existent at this time. Nevertheless, the Commission assumes significant numbers small entities in the various service categories will be affected by the rule.

With respect to the projected recordkeeping, reporting and other compliance requirements, the Commission reports that in some cases no professional skills will be required, while in others, persons with technical or engineering expertise may be required to prepare reports. These requirements range from a satellite licensee's requirement to notify the one existing LMDS operator of a satellite launch date

¹ The FCC's definition of small business varies with the category of service and is based on the Small Business Administration Standard Industrial Classifications.

6 months prior to launch to a requirement that feeder link earth stations specify a set of geographic coordinates for the location of these earth stations.

Section 605: Avoidance of duplicative or unnecessary analysis

The Commission apparently 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 due to the unavailability of data. However, the regulatory flexibility analysis indicates that the rule provides "a reasonable accommodation" to all competing interests in the band segment, including small entities.

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. In addition, the FCC posted the proposed rule on its internet site.

(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

There are information collection requirements and third party disclosure requirements subject to the Paperwork Reduction Act. These will be submitted to the Office of Management and Budget for review.

Statutory authorization for the rule

The statutory authority for the rule is reported to be 47 U.S.C. §§ 154 and 303.

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.