



Office of the General Counsel

B-278520

November 12, 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: Non-Voice, Non-Geostationary
Mobile Satellite 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 "Non-Voice, Non-Geostationary Mobile Satellite Service" (IB Docket No. 96-220; FCC 97-370). We received the rule on October 28, 1997. It was published in the Federal Register as a final rule on November 3, 1997. 62 Fed. Reg. 59293.

The final rule specifies a spectrum sharing plan and service rules for applicants in the non-voice, non-geosynchronous mobile satellite service second processing round. These satellite systems providing this service, also referred to as "Little LEO" service, use a constellation of low-Earth orbiting (LEO) satellites to offer a variety of data communications services, including, but not limited to, remote meter reading, vehicle tracking, and two-way data messaging services to customers anywhere in the world.

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.

Our Office has issued two reports recently involving satellite services--
Telecommunications: Competition Issues in International Satellite Communications
(GAO/RCED-97-1) and Telecommunications: Competitive Impact of Restructuring
the International Satellite Organizations (GAO/RCED-96-204).

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: Mr. Peter W. Herrick
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
"NON-VOICE, NON-GEOSTATIONARY MOBILE SATELLITE SERVICE"
(IB Docket No. 96-220; FCC 97-370)

(i) Cost-benefit analysis

The Commission, 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 (IRFA) and published the analysis as an appendix to the notice of proposed rulemaking.

In the final rule, the FCC presents its Final Regulatory Flexibility Analysis (FRFA) and notes that it did not receive any comments specifically related to the IRFA. The FRFA discusses the need for and objective of the final rule, a description and estimate of the number of small entities to which the rule will apply, the reporting and recordkeeping requirements, and the steps the FCC took to minimize the economic burden on small entities.

The FCC notes that two of the five applicants in the second processing round are small entities (i.e., having less than \$11 million in annual receipts). Because all of the applicants reached agreement on the spectrum sharing plan, which is adopted in this final rule, all second round applicants' systems designs are accommodated, including existing licensees. Therefore, the FCC was able to adopt their relaxed financial standard rather than the strict financial standard proposed in the notice of proposed rulemaking. This will enable small entities and start-up companies the opportunity to compete in the capital intensive satellite industry according to the FRFA.

(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 final rule was promulgated using the notice and comment procedures in 5 U.S.C. § 553. The FCC issued a notice of proposed rulemaking by publication in the Federal Register on December 31, 1996. 61 Fed. Reg. 69062.

In the full Report and Order which was submitted to our Office and which is summarized in the Federal Register, the FCC discusses the comments it received and the actions it took in response to the comments.

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

The final rule does not contain any information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act because the rule applies to less than 10 persons. 44 U.S.C. § 3502(4)(a).

Statutory authorization for the rule

The final rule was promulgated pursuant to sections 1, 4, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 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.