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Office of the General Counsel

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February 14, 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: Unlicensed NII Devices in the
5 GHz Frequency Range

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 "Unlicensed NII Devices in the 5 GHz Frequency Range" (ET Docket No. 96-102, FCC 97-5). We received the rule on January 31, 1997. It was published in the Federal Register as a final rule on January 31, 1997. 62 Fed. Reg. 4649.

The final rule makes available 300 megahertz of spectrum at 5.15-5.35 GHz and 5.725-5.825 GHz for use by a new category of unlicensed equipment called Unlicensed National Information Infrastructure (U-NII) devices. The U-NII devices will provide short-range, high speed wireless digital communications on an unlicensed basis. The FCC anticipates that the U-NII devices will support the creation of new wireless local area networks and will facilitate wireless access to the National Information Infrastructure.

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 and Telecommunications Issues. Mr. Anderson can be reached at (202) 512-2834.

Robert P. Murphy
General Counsel

Enclosure

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

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"UNLICENSED NII DEVICES IN THE 5 GHZ FREQUENCY RANGE"
(ET Docket No. 96-102, FCC 97-5)

(i) Cost-benefit analysis

The FCC stated in its submission to us that it was not required to prepare and did not 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

The proposed rulemaking, 61 Fed. Reg. 24750 (May 16, 1996), incorporated an initial regulatory flexibility analysis of the expected impact on small entities.

The analysis provides the information required by paragraphs 603(b)(1) through (b)(3). It describes the reasons for the proposed agency action, and its objectives and legal basis. It also describes the small entities (radio manufacturers and suppliers of radio equipment) to which the proposed rule will apply. It states that there are no reporting or recordkeeping requirements and that the rule does not overlap, duplicate, or conflict with any other federal rules. Finally, the analysis states that the FCC is unaware of any other alternatives which could provide sufficient spectrum in the immediate future but invites comments on this point.

Section 604: Final Regulatory Flexibility Analysis

The preamble to the final rule contains the full text of the Final Regulatory Flexibility Analysis. 62 Fed. Reg. 4652. This analysis includes the information required by paragraph 604(a) by summarizing and evaluating comments received.

Based on comments which contend that making 350 megahertz (as proposed) available would interfere with the interests of incumbent or future operations such as mobile satellite service and amateur radio parties, the FCC concludes that 300 megahertz is appropriate for the U-NII devices to operate. Additionally, the FCC did not adopt "safe harbor" rules at this time, as suggested by some commenters, to avoid interference. However, the situation will be monitored and if interference problems do arise, the "safe harbor" issue will be addressed in future rulemaking.

The analysis uses both quantifiable and general descriptions of the effects of the rule on small entities and to assist in the participation of small entities in the rulemaking, the FCC made available a complete copy of the proposed and final rulemaking materials via the Internet.

(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 FCC promulgated this rule under the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on May 16, 1996, following adoption by the FCC on April 25, 1996. 61 Fed. Reg. 24749.

The FCC received 52 comments and 26 reply comments. The FCC responds to the concerns expressed in the comments, especially those comments from incumbent and potential users of the spectrum regarding the feasibility of spectrum sharing between the new unlicensed devices and incumbent and proposed primary services, in the Report and Order. These responses are summarized in the preamble to the rule in the Federal Register.

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

The final rule contains no new information collections subject to the Office of Management and Budget's approval under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by sections 4(i), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g) and 303(r). These provisions authorize the FCC to make such rules and regulations as may be necessary to encourage more effective use of radio as in the public interest.

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