

Office of the General Counsel

B-280026

May 28, 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: 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 the Federal Communications Commission (FCC), entitled "Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services" (CC Docket No. 92-297; FCC 98-77). We received the rule on May 11, 1998. It was published in the Federal Register as a final rule on May 13, 1998. 63 Fed. Reg. 26502.

The rule is designed to facilitate more effective use of the microwave radio spectrum by permitting the partitioning of a licensee's authorized geographic service area and disaggregation or assignment of discrete portions of the radio spectrum licensed to the geographic area or qualifying entity.

The rule permits Local Multipoint Distribution Service (LMDS) licensees to partition their service areas along any boundaries they choose so that they can quickly respond to consumer demands, as opposed to restricting the partitioning to geopolitical boundaries or county lines. The FCC believes that such action will better serve the interests of the public.

The rule also permits the disaggregation of the licensed spectrum without limitation for the same reasons applied to the partitioning--to ensure that LMDS licensees are able to use their spectrum more efficiently. In addition, the rule permits combined partitioning and disaggregation.

Enclosed is our assessment of the Federal Communications Commission'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 Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Federal Communications Commission is Judy England-Joseph, Director for Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Kathleen Fagan
AMD-Performance Evaluation
and Records Management
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
"RULES AND POLICIES FOR LOCAL MULTIPONT DISTRIBUTION SERVICE
AND FOR FIXED SATELLITE SERVICES"
(CC Docket No. 92-297; FCC 98-77)

(i) Cost-benefit analysis

The FCC states that it is not required to prepare a cost-benefit analysis and none was furnished to us.

(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 in connection with the proposed rule and a Final Regulatory Flexibility Analysis for this final rule. The analyses describe the reasons for the rule, the potential small entities that will be affected by the rule, the recordkeeping and reporting requirements, and the steps taken to minimize the burden on small entities.

The rule was designed to implement the congressional goal of giving small business and other entities the opportunity to participate in the provision of spectrum-based services. The analysis also discusses the alternatives considered and rejected.

(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. On April 7, 1997, the FCC published the Fifth Notice of Proposed Rule Making, 62 Fed. Reg. 16514, wherein the FCC sought comments on specific procedural, administrative, and operational rules proposed to govern LMDS partitioning and disaggregation. The FCC reports that it received five comments and five reply comments in response, all of which were considered in promulgating

the final order. The FCC discusses the issues raised in the preamble to the proposed rule.

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

The rule imposes reporting and recordkeeping requirements on small entities seeking licenses through partitioning and disaggregation. The information required will be submitted on an FCC form presently in use and which has already received Office of Management and Budget approval. The FCC estimates that the average time needed to complete the information required by the forms is 3 hours. The FCC also believes that the majority of the respondents will contract out the effort.

Statutory authorization for the rule

The rule was issued pursuant to 47 U.S.C. §§ 154, 303.

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of E.O. 12866.