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United States Government Accountability Office  
Washington, DC 20548

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B-294894

December 3, 2004

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Joe Barton  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Federal Communications Commission: Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding*

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 "Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding" (FCC 04-168). We received the rule on September 10, 2004. It was published in the Federal Register as a final rule on November 22, 2004. 69 Fed. Reg. 67823.

The final rule addresses the problem of increasing instances of interference to the 800 MHz public safety communications systems. The final rule holds the involved "Enhanced" Specialized Mobile Radio and cellular telephone licensees responsible for abating interference by the application of a variety of technical remedies.

This rulemaking was the subject of a recent decision of our Office. *Whether the Federal Communications Commission's Order on Improving Public Safety Communications in the 800 MHz Band Violates the Antideficiency Act or the Miscellaneous Receipts Statute*, B-303413, November 8, 2004. We found that neither statute was violated.

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 FCC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Michael Gryzkowiec, Managing Director, Physical Infrastructure. Mr. Gryzkowiec can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Nicole McGinnis  
Attorney Advisor  
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  
"PRIVATE LAND MOBILE SERVICES; 800 MHZ PUBLIC SAFETY  
INTERFERENCE PROCEEDING"  
(FCC 04-168)

(i) Cost-benefit analysis

The FCC's submission to our Office stated 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

The FCC prepared a Final Regulatory Flexibility Analysis that complies with the requirements of the Act. The Analysis discusses the need for the rule and a description and estimate of the number of small entities to which the rule will apply and the steps taken to minimize the impact on small entities.

(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 issued using the notice and comment procedures found at 5 U.S.C. 553. On April 5, 2002, the FCC published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 16351. In response, the FCC received 139 comments and 17 reply comments, which are discussed in the preamble to the final rule.

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

The final rule contains an information collection that is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The FCC has submitted the required information for approval. In

addition, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4), FCC has determined that the information collection requirements will not adversely affect businesses with less than 25 employees.

#### Statutory authorization for the rule

The final rule is promulgated pursuant to the authority found in sections 1, 4(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332.

#### Executive Order No. 12866

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