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Office of the General Counsel

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June 25, 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: Amendment to the Commission's Rules Regarding a Plan for Sharing the Cost of Microwave Relocation, First Report and Order and Further Notice of Proposed Rule Making

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, entitled "Amendment to the Commission's Rules Regarding a Plan for Sharing the Cost of Microwave Relocation, First Report and Order and Further Notice of Proposed Rule Making" (WT Docket No. 95-157, FCC 96-196). We received the rule on May 6, 1996. It was published in the Federal Register as a final rule on June 12, 1996. 61 Fed. Reg. 29679.

This rule changes and clarifies certain aspects of the Commission's microwave relocation rules and adopts a plan for sharing the costs of relocating microwave facilities currently operating in the 1850 to 1990 MHz (2GHz) band. That band has been allocated for use by broadband Personal Communications Services (PCS) licensees.

Enclosed is our assessment of the Federal Communications Commission'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 Federal Communications Commission complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John H. 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

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
AMENDMENT TO THE COMMISSION'S RULES REGARDING A PLAN FOR
SHARING THE COST OF MICROWAVE RELOCATION, FIRST REPORT AND
ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING
(WT Docket No. 95-157, FCC 96-196)

(i) Cost-benefit analysis

The Commission 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, 60 Fed. Reg. 55529 (November 1, 1995), incorporated an initial regulatory flexibility analysis of the expected impact on small entities.

The analysis included in the proposed rulemaking provides the information required by paragraphs 603(b)(1) through (3). It describes the reasons for the proposed agency action, and its objectives and legal basis. It also describes the small entities (PCS licensees) to which the proposed rule will apply. The information required by paragraph 603(b)(4) concerning an estimate of the classes of small entities subject to the requirement and the type of professional skills necessary for preparation of the required report is contained in the preamble under the Paperwork Reduction Act section as permitted by section 605(a). In accordance with paragraph 603(b)(5), the Commission notes that the proposed rule does not duplicate, overlap, or conflict with any relevant federal rule. Finally, the analysis reports, as required by paragraph 603(c), that the Commission has reduced burdens where possible and that the regulatory burdens retained are necessary to ensure the public receives the benefits of the new services in a prompt and efficient manner.

Section 604: Final Regulatory Flexibility Analysis

The Supplementary Information published in the Federal Register with the final rule includes the full text of the Commission's final regulatory flexibility analysis. 61 Fed. Reg. 29688. This analysis includes the information required by paragraph 604(a) by summarizing and evaluating comments received.

Numerous comments were received regarding the proposed plan to convert microwave incumbents to secondary status when the relocation rules sunset in 2005 and thereafter, licensees would not be required to pay relocation costs after that date to such incumbents. The American Public Power Association commented that conversion to secondary status would have a severe impact on the limited budgets of small, non-profit public utility systems. Incumbent commentators noted that this will encourage licensees to "wait out" incumbents and increase the likelihood that incumbents would have to assume the costs of their own relocation. PCS licensees argued that by 2005, most incumbent's equipment would be fully amortized or in need of replacement.

In an attempt to balance the interests, the Commission has decided to retain the sunset date of 2005 as the date after which licensees would not have to pay relocation costs to incumbents but decided that incumbents would not convert to secondary status until and unless an emerging technology licensee required use of the spectrum, regardless of the sunset date.

The final analysis was forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

Section 605: Avoidance of duplicative or unnecessary analysis

The Commission 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

The Commission's analysis uses both quantifiable and general descriptions of the effects of the rule on small entities.

Section 609: Participation by small entities

In addition to the actions required by 5 U.S.C. § 553, the Commission also 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 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 Commission promulgated the rule under the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on November 1, 1995. 60 Fed. Reg. at 55529. The Commission received comments on the proposed rule from 45 commenters. In the preamble to the final rule, the Commission responded to issues raised during the comment period.

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

Two portions of the rule contain information collection requirements covered by the Act. The rule requires that once a PCS licensee and a microwave incumbent have signed an agreement with respect to relocation of the microwave license, the parties would submit the relocation agreement to an industry-supported clearinghouse. 60 Fed. Reg. 55536. The rule further requires microwave licensees who seek special status as public safety licensees in order to obtain special consideration (*ie.* an extended voluntary negotiation period) obtain a certification confirming their public safety status from the department head responsible for system oversight.

The Commission has published in both the proposed and final rulemaking notices the information required by the Act. These requirements include the reasons for the collection of the information, the type of information and an estimate of the burden imposed on respondents. Comments were solicited from the public, other federal agencies and the Office of Management and Budget (OMB).

The Commission has advised our Office that the two portions of the rule requiring approval by OMB under the Act will not become effective until such approval is received. The Commission estimates these dates will be later than 60 days after the Federal Register publication.

Statutory authorization for the rule

The Commission has cited as authority Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r) and 332 of the Communications Act, 47 U.S.C. §§ 154(i), 157, 303(c), 303(f), 303(g), 303(r) and 332, as amended. Sections 303(f) and (g) empower the Commission to make such regulations as necessary to prevent interference between stations and encourage the larger and more effective use of radio in the public interest, respectively. Section 332 requires the Commission, in managing the spectrum used by private land mobile services, to encourage competition and provide services to the largest feasible number of users.

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 Commission did not identify any other statutes or Executive Orders imposing requirements relevant to the rule.