



Office of the General Counsel

B-272533.1

July 24, 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: Federal Communications Commission: Assessment and Collection of
Regulatory Fees for Fiscal Year 1996

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 "Assessment and Collection of Regulatory Fees for Fiscal Year 1996" (MD Docket No. 96-84, FCC 96-295). We received the rule on July 10, 1996. It was published in the Federal Register as a final rule on July 12, 1996. 61 Fed. Reg. 36629.

The Commission's Report and Order adopts rule changes to revise its Schedule of Regulatory Fees in order to recover the costs specified by Congress for its enforcement, policy and rulemaking, international activities, and user information services. 47 U.S.C. § 159(a).

Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. 47 U.S.C. § 159(b)(2). For fiscal year 1996, Congress determined that the Commission should recover \$126,400,000 in costs, an amount 8.6 percent higher than required in fiscal year 1995.

Pub. L. 104-134. Therefore, the Commission had to revise its fee schedule in order to meet the increased revenue requirements.

In addition to adjusting the fee schedule to ensure collection of the \$126,400,000, the Report and Order also adjusts the fee schedule and associated payment procedures for certain fees mandated by Congress, makes changes to the estimated number of units subject to a fee, and incorporates certain public interest considerations. See 47 U.S.C. § 159(b).

Finally, the Report and Order amends the schedule to increase the number of regulatees subject to a fee, to simplify the schedule, and to clarify and revise certain payment procedures as provided for in section 9(b)(3) of the Communications Act of 1934, as amended. 47 U.S.C. § 159(b)(3).

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 Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. 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

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FISCAL YEAR
1996"
(MD Docket No. 96-84, FCC 96-295)

(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.

(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. 16432 (April 15, 1996), incorporated an initial regulatory flexibility analysis of the expected impact on small businesses. The Commission sought written public comments on the proposed rulemaking, including comments on the initial regulatory flexibility analysis.

The analysis included in the proposed rulemaking provides the information required by paragraphs 603(b)(1) and (2). It describes the reasons for the proposed agency action and its objectives and legal basis. The information required by paragraphs 603(b)(3) and (4) concerning an estimate of the classes of small entities subject to the Report and Order and the projected reporting, record-keeping and other compliance requirements of the proposed rule is also included. In accordance with section 603(b)(5), the Commission notes that the proposed Report and Order does not duplicate, overlap, or conflict with any other relevant federal rule.

Finally, the Commission solicited comments on the alternative methods of assessing the regulatory fees discussed in the proposed rule in compliance with section 603(c).

Section 604: Final Regulatory Flexibility Analysis

Appendix A to the Report and Order includes the full text of the Commission's final regulatory flexibility analysis. 61 Fed. Reg. 36642. The Commission satisfies the requirements of section 604(a). It describes the need for and objective of the Report and Order. It also reports that no comments were submitted in response to

the initial regulatory flexibility analysis. The analysis describes the small entities affected by the rulemaking and estimates that approximately 20,000 small entities will be affected. The analysis further describes the projected reporting, record-keeping and other compliance requirements and describes how the Commission further amended its procedures to minimize the effect on small entities, even though no comments were submitted on this matter.

Agency officials stated that copies of both the initial and the final analysis were submitted to the Chief Counsel for Advocacy at the Small Business Administration as required by section 605(b).

(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 April 15, 1996. 61 Fed. Reg. 16432. The Commission received comments on the rule from 12 commenters, including licensees, trade associations, and a law firm.

The Commission indicates that it gave full consideration to the comments filed by all interested parties and, in certain instances, decided to adjust the Schedule of Regulatory Fees because of these comments. A detailed discussion of the comments and the Commission's consideration appears at 61 Fed. Reg. 36632-36638.

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

This Final Report and Order is subject to the Act since the Commission requires licensees to complete and file a form FCC 159 with the payment of their annual fee. The Commission has received Office of Management and Budget clearance for this information collection requirement (OMB # 3060-0589, expires 2/28/97).

Statutory authorization for the rule

Authorization for this rulemaking is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j) and 159 and 303(r). In addition, Congress specifically mandated that the Commission collect \$126,400,000 in regulatory fees for FY96 to recover the costs of enforcement,

policy, rulemaking, international and user information activities. Pub. L. No. 104-134, 110 Stat. 56 (1996).

The Commission did not identify any other statutes or executive orders imposing requirements relevant to the Report and Order.