



United States
General Accounting Office
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Office of the General Counsel

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December 18, 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: Foreign Participation in the U.S.
Telecommunications Market

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 "Foreign Participation in the U.S. Telecommunications Market" (IB Docket No. 97-142; FCC 97-398). We received the rule on November 28, 1997. It was published in the Federal Register as a final rule on December 9, 1997. 62 Fed. Reg. 64741.

The final rule adopts a new standard for foreign participation in the United States telecommunications market in light of the World Trade Organization (WTO) agreement concluded on February 1, 1997. In the WTO agreement, 69 countries agreed to open their markets for basic telecommunications services to competition from foreign carriers. The final rule removes the effective competitive opportunities test and replaces it with an open entry standard.

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

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Peter W. Herrick
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
"FOREIGN PARTICIPATION IN THE
U.S. TELECOMMUNICATIONS MARKET"
(IB Docket No. 97-142; FCC 97-398)

(i) Cost-benefit analysis

The FCC, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of the final rule.

(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 and a Final Regulatory Flexibility Analysis, which appeared in the preambles to the proposed and final rules, respectively.

The analyses describe the reason for the rule and the legal basis for it and include descriptions and estimates of the number of small entities affected by the rule; discussions of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities.

In the Final Regulatory Flexibility Analysis, there is a lengthy discussion of the steps taken to minimize the burden on small entities and, in particular, a discussion of the reasons why two commenters' proposals were not incorporated into the final rule. These included indirect foreign investment in C-block and F-block (known as "entrepreneur" blocks) licensees and disregarding investments in common carrier radio licensees by non-carriers held as publicly traded securities.

(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 contained in 5 U.S.C. § 553. On June 17, 1997, the FCC published a notice of proposed rulemaking in the Federal Register seeking comments on the proposal. 62 Fed. Reg. 32966. In the preamble to the final rule, the actions taken on the comments received are discussed, including raising the level of foreign ownership that requires prior notification from 10 percent to greater than 25 percent.

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

The final rule contains a modified information collection and the preamble to the final rule requests comments from the public regarding the collection. The preamble also contains the need and uses for the collection, the estimated number of respondents, and an estimate of the annual burden hours and costs.

The FCC estimates that there will be 3,251 respondents with an estimated burden cost of \$3,192 per respondent, and the total annual burden hours are estimated at 145,895.

Statutory authorization for the rule

The final rule was issued pursuant to the authority of sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), and 310 of the Communications Act of 1934. 47 U.S.C. §§ 151, 152, 154(i), 201, 205, 214, 303(r), and 310.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.