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Office of the General Counsel

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September 11, 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: Provision of Roaming Services by  
Commercial Mobile Radio Service Providers

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 "Provision of Roaming Services by Commercial Mobile Radio Services Providers" (FCC-96-284). We received the rule on August 27, 1996. It was published in the Federal Register as a final rule on August 27, 1996. 61 Fed. Reg. 43977.

In this Report and Order, the Commission requires cellular, broadband personal communications services and certain specialized mobile radio licensees to provide manual roaming services upon request to subscribers in good standing of all such carriers, providing those subscribers are using handsets technically capable of accessing the licensee's system. The Commission states that this requirement will (1) ensure that customers of all such providers will have an equal opportunity to obtain manual roaming services and (2) will promote the development of new competition by ensuring that no providers will be disadvantaged competitively by being unable to provide roaming capabilities to their subscribers.

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 this Second Report and Order. 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 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  
"SECOND REPORT AND ORDER: PROVISION OF ROAMING SERVICES BY  
COMMERCIAL MOBILE RADIO SERVICE PROVIDERS"  
(FCC-96-284)

Background of Report and Order

The Federal Communications Commission initiated this proceeding with a Notice of Proposed Rulemaking and Notice of Inquiry that requested comments on (1) whether the obligation to permit roaming should be extended to all commercial mobile radio services, (2) what regulatory standards are appropriate, and (3) what technical issues or requirements are implicated. 59 Fed. Reg. 35664, July 13, 1994.

In a Second Notice of Proposed Rulemaking, the Commission tentatively concluded that roaming service is important to the development of a seamless commercial mobile radio service. The Commission proposed to monitor the development of roaming service and to intercede where appropriate. The Commission also requested comments on several other issues related to roaming. 60 Fed. Reg. 20949, April 28, 1995.

Under the rule adopted in this Report and Order, cellular, broadband personal communications services and covered specialized mobile radio licensees are required to provide manual roaming to any subscriber of any of these services who is using a handset that is technically capable of accessing the licensee's system. The Commission also makes compliance with these rules by the providers a condition for licensing under sections 303(r) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r) and 309.

(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

In both the Notice and the Second Notice of Proposed Rulemakings, the Commission prepared and published an Initial Regulatory Flexibility Analysis and invited 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 sections 603(b)(1) and (2). It describes the reasons for the proposed agency action and its objectives and legal basis. The information required by sections 603(b)(3) and (4) concerning the estimate of the classes of small entities subject to the Report and Order and the projected reporting, recordkeeping and other compliance requirements of the proposed rule is also included. In accordance with section 605(b)(5), the Commission notes that the proposed Rule and Order does not duplicate, overlap or conflict with any other relevant federal rule.

Finally, the Commission solicited comments on a variety of alternatives regarding interconnection, roaming and resale obligations for commercial mobile radio service providers in compliance with section 603(c).

Section 604: Final Regulatory Flexibility Analysis

The Supplementary Information published in the Federal Register includes the full text of the Commission's Final Regulatory Flexibility Analysis. 61 Fed. Reg. 43978. This analysis includes information required by section 604 including a description of the need for and purpose of this Report and Order and a discussion of comments received in regard to the Initial Regulatory Flexibility Analysis.

Although no comments were filed in direct response to the initial analysis, the Commission stated that some general comments related to issues that could affect small entities. Some commenters argued that the Commission should adopt a roaming rule to allow smaller carriers to compete more effectively. Some commenters expressed concern about the feasibility and/or cost of roaming requirements; some particularly expressed concern about requirements for modification of existing technologies to facilitate roaming. The Commission addressed these comments in its Second Report and Order. (FCC 96-284, released August 15, 1996).

The analysis describes the small entities potentially affected by the Report and Order, describing separately cellular licensees, broadband personal communication services licensees, and specialized mobile radio licensees. The Commission's analysis also states that this Second Report and Order imposes no reporting or recordkeeping requirements and describes the steps taken to minimize the economic impact on small businesses.

Finally, the analysis discusses several significant alternatives considered and rejected by the Commission.

#### Section 607: Preparation of analysis

The Commission's analysis addressed the effects of the rule on small entities in a general manner, consistent with the requirements of section 607.

#### Section 609: Participation by small entities

The Commission offered the opportunity to comment on both the initial and the second proposed rule and order to any interested parties, including small entities. The Commission's submission to GAO did not highlight any other actions taken to encourage small entity participation in the rulemaking process.

#### (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 this rule under the notice and comment procedures of 5 U.S.C. § 553. An initial Notice of Proposed Rulemaking was released on July 1, 1994 (9 FCC Rcd 5408) and a Second Notice of Proposed Rulemaking was released on April 20, 1995 (10 FCC Rcd 10666). Summaries of the notices of these proposed rulemakings were published in the Federal Register. (See 59 Fed. Reg. 35664 and 60 Fed. Reg. 20949). Fifty-one parties filed comments and 34 parties filed replies in response to comments. The Commission indicates that it gave full consideration to the comments filed by the parties. A discussion of the Commission's consideration of these comments is considered in the full text of the Second Report and Order.

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

The rule does not impose information collection requirements subject to the Act.

Statutory authorization for the rule

Authorization for this rulemaking is contained in sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 303(r), 309, 332, and 403.

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