



Office of the General Counsel

B-278657

December 1, 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: Ka-Band Satellite Application and Licensing Procedure

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 "Ka-Band Satellite Application and Licensing Procedure" (CC Docket No. 92-297; FCC 97-378). We received the rule on November 17, 1997. It was published in the Federal Register as a final rule on November 18, 1997. 62 Fed. Reg. 61448.

The final rule adopts licensing qualification requirements and service rules for a new generation of fixed service systems in the Ka-Band.¹ The systems can provide a wide variety of broadband interactive digital services including: voice, data and video; videoconferencing; facsimile; computer access and telemedicine. The systems can provide direct-to-home services, potentially allowing customers to participate in activities from distance learning to interactive home shopping.

¹The term *Ka-Band* generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz, or the "28 GHz band."

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

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"KA-BAND SATELLITE APPLICATION AND LICENSING PROCEDURE"
(CC Docket No. 92-297; FCC 97-378)

(i) Cost-benefit analysis

The Commission, 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 rule and the final rule, 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; a discussion 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, it is pointed out that, following months of working with all of the applicants, agreement was reached on an orbital assignment plan to accommodate all first-round applicants. Therefore, the FCC was able to waive its financial qualification requirements. This will enable small entities the opportunity to compete in the capital intensive satellite industry.

(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 final rule was issued using the notice and comment procedures contained in 5 U.S.C. § 553. On July 29, 1996, the FCC issued a notice of proposed rulemaking and requested comments from the public. 61 Fed. Reg. 39425. This proposed rule

followed an earlier proposed rule issued on August 23, 1995 (60 Fed. Reg. 43470) which also involved a request for comments on qualifications and rules for systems operating at the Ka-Band.

In the preamble to the final rule, the FCC responds to the comments it received as a result of the publication of the proposed rules.

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

The final rule contains an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and a request for OMB approval will be submitted. Comments are solicited in the preamble to the final rule and can be filed until January 20, 1998.

The preamble to the final rule discusses the information collection, which is an annual report from all licensees including the status of space station construction and a listing of any non-scheduled space station outages for more than 30 minutes and the causes thereof. The FCC estimates there will be 20 respondents and the burden hours will be 2 hours per respondent or an annual total burden of 40 hours.

The information collection will not be conducted until OMB approval is obtained and an OMB control number is issued.

Statutory authorization for the rule

The final rule is authorized by sections 4 and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. §§ 154 and 303(r)) and section 201(c) of the Communications Satellite Act of 1962 (47 U.S.C. § 721(c)).

Executive Order No. 12866

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