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Washington, DC 20548

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May 7, 2020

The Honorable Roger Wicker
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Expanding Flexible Use of the 3.7 to 4.2 GHz Band*

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 (Commission) entitled “Expanding Flexible Use of the 3.7 to 4.2 GHz Band” (FCC 20-22). We received the rule on March 5, 2020. It was published in the *Federal Register* as a final rule on April 23, 2020. 85 Fed. Reg. 22804. The effective date of the rule is June 22, 2020. According to the Commission, compliance for certain aspects of the rule will not be required until the Commission publishes a document in the *Federal Register* announcing that compliance date.

According to the Commission, the final rule makes 280 megahertz of spectrum available for flexible use throughout the contiguous United States and does so in a manner to ensure the continuous and uninterrupted delivery of services currently offered in the band. The Commission stated that the spectrum will be publicly auctioned to ensure that the public recovers a substantial portion of the value of this resource and also stated that it would establish a robust transition schedule to ensure that a significant amount of spectrum is made available quickly for upcoming 5G deployments. According to the Commission, this action is the next critical step in advancing American leadership in 5G and to implementing its comprehensive plan to facilitate America’s superiority in 5G technology.

Enclosed is our assessment of the Commission’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
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Enclosure

cc: Jessica Greffenius
Associate Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“EXPANDING FLEXIBLE USE OF THE 3.7 TO 4.2 GHZ BAND”
(FCC 20-22)

(i) Cost-benefit analysis

In its submission to us, the Federal Communications Commission (Commission) indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Commission included in its submission to us a copy of the Final Regulatory Flexibility Analysis for this final rule. The analysis included (1) a statement of the need for and objectives of the rule; (2) a summary of significant issues raised by public comments in response to the Initial Regulatory Flexibility Analysis; (3) a response to any comments by the Chief Counsel for Advocacy of the Small Business Administration; (4) a description and estimate of the number of small entities to which the rule will apply; (5) a description of projected reporting, recordkeeping, and other compliance requirements for small entities; and (6) a description of steps taken to minimize the significant economic impact on small entities and significant alternatives considered.

(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 the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The Commission published a notice of proposed rulemaking (NPRM). 83 Fed. Reg. 44128 (Aug. 29, 2018). The Commission sought written public comments on the proposals in the NPRM, including comments on the initial regulatory flexibility analysis (IRFA). No comments were filed addressing the IRFA.

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

The Commission determined that this final rule contains information collection requirements under the Act. The Commission stated that certain aspects of the final rule constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), and that the new or modified collections would be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of PRA. The Commission noted that OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of chapters 2, 5, 9, and 13, and sections 154, 301, 302, 302a, 303, 307, 309, 310, 319, 332, 336, 337, 605, 721, 1403, 1404, 1451, and 1452 of title 47 United States Code; along with section 2461 of title 28 United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.