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United States Government Accountability Office
Washington, DC 20548

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September 10, 2007

The Honorable Daniel I. Inouye
Chairman
The Honorable Ted Stevens
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Service Rules for the 698-806 MHz Band, Revision of the Commission's Rules Regarding Public Safety Spectrum Requirements, and a Declaratory Ruling on Reporting Requirement under the Commission's Anti-Collusion Rule*

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 "Service Rules for the 698-806 MHz Band, Revision of the Commission's Rules Regarding Public Safety Spectrum Requirements, and a Declaratory Ruling on Reporting Requirement under the Commission's Anti-Collusion Rule" (FCC No. 07-132). We received the rule on August 17, 2007. It was published in the *Federal Register* as a final rule on August 24, 2007. 72 Fed. Reg. 48,814. The final rule is effective on October 23, 2007, except for certain amendments that contain information collection requirements that have not yet been approved by the Office of Management and Budget.

The final rule governs wireless licenses in the 698-806 MHz Band. This band is currently occupied by television broadcasters and is being made available for wireless services as a result of the digital television (DTV) transition. In passing the Digital Television Transition and Public Safety Act of 2005, Congress accelerated the DTV transition by providing a date certain, February 17, 2009, for the end of the transition. See Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 21.

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 FCC complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Patricia Dalton, Managing Director, Physical Infrastructure. Ms. Dalton can be reached at (202) 512-2834.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Paul Murray
Senior Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"SERVICE RULES FOR THE 698-806 MHZ BAND, REVISION OF THE
COMMISSION'S RULES REGARDING PUBLIC SAFETY SPECTRUM
REQUIREMENTS, AND A DECLARATORY RULING ON REPORTING
REQUIREMENT UNDER THE COMMISSION'S ANTI-COLLUSION RULE"
(FCC NO. 07-132)

(i) Cost-benefit analysis

The Federal Communications Commission is not required to prepare and did not prepare a cost-benefit analysis for 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 in connection with the proposed and final rules, respectively. Both analyses comply with the requirements of the Act. Among the steps taken to reduce the burden on small entities, the FCC provided for an additional spectrum block that will increase the opportunity for small entities to obtain smaller license areas that meet their needs while avoiding the transaction costs associated with obtaining access to spectrum in the secondary market.

(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 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 found at 5 U.S.C. § 553. On May 16, 2007, the FCC published a Notice of Proposed Rulemaking and Request for Comment in the *Federal Register* regarding the proposed rule. 72 Fed. Reg. 27,688. (In this notice, three ongoing proceedings were combined and addressed together.) In the final rule, the FCC published the list of comments and reply comments.

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

The final rule contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995. The FCC plans to submit these information collection requirements to the Office of Management and Budget for review, as required by section 3507(d) of the Act. In the final rule, the FCC requested public comment on these requirements, and the comments were due by August 31, 2007.

Statutory authorization for the rule

The final rule was promulgated under the authority found at sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154-155, 157, 160-161, 201, 225, 251-254, 301-303, 307, 309, 332, 336-337.

Executive Order No. 12,866

As an independent regulatory agency, the FCC is not subject to the review requirements of the order.