

441 G St. N.W.
Washington, DC 20548

B-333218

May 4, 2021

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

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Facilitating Shared Use in the 3100-3550 MHz 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 “*Facilitating Shared Use in the 3100-3550 MHz Band*” (FCC 21-32).¹ We received the rule on March 22, 2021. It was published in the *Federal Register* as a final rule on April 7, 2021. 86 Fed. Reg. 17920. The effective date is June 7, 2021.

According to the Commission, the final rule adopts changes to make 100 megahertz of mid-band spectrum in the 3.45–3.55 GHz band available for flexible use. The Commission stated the final rule allocates the 3.45 GHz band to add a co-primary non-federal fixed and mobile (except aeronautical mobile) allocation and adopted technical, licensing, and competitive bidding rules for this service largely consistent with its rules for other flexible-use wireless spectrum bands. The Commission stated while the majority of incumbent federal operations in this band will be relocated to alternate spectrum, some operations will continue and must be protected from harmful interference through a system of coordination in specific Cooperative Planning Areas and Periodic Use Areas. In addition, the Commission stated the final rule requires non-federal radio location operations in the band to sunset operations within 180 days after the grant of new flexible-use licenses and provides for reimbursement of reasonable relocation costs. Further, the Commission also stated the final rule requires amateur operators in the band to cease operations within 90 days of the public notice announcing the close of the auction, while allowing these amateur operations to continue in the 3.3–3.45 GHz band pending future Commission action in that spectrum.

¹ The due date for this major rule report was April 22, 2021. Due to a processing error on our part, we are delayed in our issuance of this report.

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ryan Palmer
Chief, Telecommunications Access
Policy Division, WCB
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“FACILITATING SHARED USE IN THE 3100-3550 MHz BAND”
(FCC 21-32)

(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 prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a description of the need for, and objectives of, the final rule; (2) a summary of significant issues raised by public comments in response to the proposed rule; (3) a summary of the response to comments by Chief Counsel for Advocacy of the Small Business Administration; (4) a description and estimate of the number of small entities to which the rules will apply; (5) a description of projected reporting, recordkeeping, and other compliance requirements for small entities; and (6) a summary of the 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 requirements of the Act.

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

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

On October 21, 2020, the Commission published a proposed rule. 85 Fed. Reg. 66888. The Commission received comments on the proposed rule and responded to them in the final rule.

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

The Commission determined the final rule contains information collection requirements (ICRs) subject to the requirements of the Act.

Statutory authorization for the rule

The Commission promulgated the final rule pursuant to section 2461 of title 28, and sections 21 *et seq.*, 151 *et seq.*, 302a, 303, 307, 309, 332, 336, 337, 363, 1001 *et seq.*, and 1401 *et seq.* of title 47, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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