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Washington, DC 20548

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May 18, 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: Use of the 5.850-5.925 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 "Use of the 5.850-5.925 GHz Band" (FCC 20-164). We received the rule on December 23, 2020. It was published in the *Federal Register* as a final rule on May 3, 2021. 86 Fed. Reg. 23281. The effective date is July 2, 2021.

According to the Commission, the final rule adopts revised regulations to repurpose the lower 45 megahertz of the 5.850–5.925 GHz band (5.9 GHz band) for the expansion of unlicensed mid-band spectrum operations, while retaining the upper 30 megahertz of spectrum in the 5.9 GHz band for intelligent transportation system (ITS) operations. The Commission stated that splitting the 5.9 GHz band between unlicensed and ITS uses is intended to optimize use of the spectrum resources in the 5.9 GHz band to fully and effectively serve the American people, providing access to additional spectrum for unlicensed use to help meet the growing demand for wireless broadband, while retaining spectrum for ITS use to meet current and future ITS needs within the transportation and vehicular-safety related ecosystem.

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  
Managing Associate General Counsel

Enclosure

cc: Ronald Repasi  
Acting Chief, OET  
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
FEDERAL COMMUNICATIONS COMMISSION  
ENTITLED  
“USE OF THE 5.850-5.925 GHZ BAND”  
(FCC 20-164)

(i) Cost-benefit analysis

The Federal Communications Commission (Commission) stated it expects to realize substantial benefits by expanding Wi-Fi capacity. Even using a highly conservative approach to calculate benefits, the Commission stated it anticipates a present value of approximately \$6 billion in benefits in each of the years 2023-2025, or \$17.2 billion over that time frame. The Commission also noted that unlicensed use of the 5.9 GHz band may lead to benefits well beyond 2025. At the same time, by preserving the upper 30 megahertz for intelligent transportation system operations, the Commission stated it is permitting current and future licensees to continue to offer such service in the band. The Commission further stated it took into consideration the one-time transaction costs associated with incumbent licensees transitioning their operations to the upper 30 megahertz of spectrum, and determined that these costs are significantly less than the present value of the benefits.

(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 statement of the need for, and objectives of, the final rule; (2) a summary of significant issues raised by public comments in response to the Interim Regulatory Flexibility Analysis; (3) a response to 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 final rule will apply; (5) a description of the requirements of projected reporting, recordkeeping, and other compliance; 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 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 February 6, 2020, the Commission published a proposed rule. 85 Fed. Reg. 6841. The Commission received comments on the proposed rule and addressed them in the final rule.

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

The Commission determined the final rule contained information collection requirements subject to the Act and submitted them to the Office of Management and Budget for approval.

Statutory authorization for the rule

The Commission promulgated the final rule pursuant to sections 154, 161, 302a, 303, 304, 307, 332, 336, 544a, 549, and 1401-1473 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.