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November 16, 2007

The Honorable Daniel K. 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: Review of the Emergency Alert System*

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 “Review of the Emergency Alert System” (FCC 07-109). We received the rule on September 27, 2007. It was published in the *Federal Register* as a final rule on November 2, 2007. 72 Fed. Reg. 62,123.

The final rule amends the Commission’s rules regarding the Emergency Alert System (EAS) to ensure the efficient, rapid, and secure transmission of EAS alerts in a variety of formats (including text, audio, and video) and via different means (broadcast, cable, satellite, and other networks), increasing the reliability, security, and efficacy of the EAS network. The final rule requires EAS participants to maintain the existing system and establish the framework for the Next Generation EAS.

The final rule is effective on December 3, 2007. 72 Fed. Reg. 62,123. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by

Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The final rule was not published in the *Federal Register* until November 2, 2007, which means that the final rule will not have the required 60-day delay in its effective date.

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. Our review indicates that, except for the delay in the effective date, the Commission 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: Claudia Fox
Associate Division Chief, PCOOD, PSHSB
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"REVIEW OF THE EMERGENCY ALERT SYSTEM"
(FCC 07-109)

(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 Commission 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. Moreover, in the Initial Regulatory Flexibility Analysis, the Commission sought comments on the burdens imposed on small entities; however, no commenter proposed an alternative version that would lessen the economic burdens.

(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 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 August 30, 2004, the Commission published a Notice of Proposed Rulemaking and Request for Comment in the Federal Register regarding the proposed rule. 69 Fed. Reg. 52,843. In the final rule, the Commission responded to the comments received in response to the proposed rule.

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 Commission 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.

Statutory authorization for the rule

The final rule was promulgated under the authority in 47 U.S.C. §§ 151, 154(i) and (o), 303(r), 544(g), and 606.

Executive Order No. 12,866

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