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Office of the General Counsel

B-276419

March 21, 1997

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Federal Communications Commission: Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act; Competitive Bidding

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 "Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act; Competitive Bidding" (WT Docket No. 96-18; PP Docket No. 93-253; FCC 97-59). We received the rule on March 6, 1997. It was published in the Federal Register as a final rule on March 12, 1997. 62 Fed. Reg. 11616.

The final rule governs the geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging and the competitive bidding procedures for auctioning mutually exclusive applications for these licenses. The Commission states that the rule is necessary to promote competition and efficient licensing in paging services.

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 the Commission complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John Anderson, Director of Transportation Issues. Mr. Anderson can be reached at (202) 512-2834.

Robert P. Murphy  
General Counsel

Enclosure

cc: Mr. Andrew S. Fishel  
Managing Director  
Federal Communications Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE FEDERAL COMMUNICATIONS COMMISSION  
ENTITLED  
"FACILITATE FUTURE DEVELOPMENT OF PAGING SYSTEMS AND  
IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT;  
COMPETITIVE BIDDING"  
(WT Docket No. 96-18; PP Docket No. 93-253; FCC 97-59)

(i) Cost-benefit analysis

The Commission, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of the final rule.

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

The Commission prepared an Initial Regulatory Flexibility Analysis in connection with the proposed rule. The analysis was available in the Commission's docket for review by the public and the submission of comments.

The preamble to the final rule contains the complete Final Regulatory Flexibility Analysis, which describes the reason for the final rule and the legal basis for it. The analysis also includes descriptions and estimates of the number of small entities affected by the rule; a discussion of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities. The analysis discusses the comments received in response to the Initial Regulatory Flexibility Analysis.

The Commission adopted a two-tiered definition of small business which allows greater flexibility for qualifying small businesses through varying bidding credits. In addition, a small business may pay its winning bid in quarterly installments over the term of the license with qualified licensees being permitted to make interest-only payments for the first 2 years.

However, the Commission concluded that it would not permit small businesses to make a lower down payment than the 20 percent of the winning bid required of all bidders because it is necessary to ensure the financial capability of the bidder and provide stronger assurances against default.

(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 title II of 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 promulgated using the notice and comment procedures of 5 U.S.C. § 553. On February 16, 1996, the Commission published in the Federal Register a Notice of Proposed Rulemaking and requested comments on the proposed rule. 61 Fed. Reg. 6199.

The preamble to the final rule discusses the changes the Commission made to the proposed rule as a result of the comments, including not adopting the formulas proposed regarding co-channel interference protection but using the fixed distances already in existing criteria. In addition, the Commission explains why it did not choose to change the proposed rule in response to certain comments.

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

The final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. In the preamble to the proposed rule, 61 Fed. Reg. 6209, the Commission explained the need for the information and the burden estimate related to the collections. The Commission estimated that the collections from 750 existing licensees and 525 auction winners would entail a one-time hourly burden of 4,099 hours at a cost of \$1,008,036. Also, the Commission had invited comments on the information collection, including its necessity and the accuracy of the burden estimate, be sent to the Commission and OMB.

In the preamble to the final rule, the Commission notes that the collections were approved by OMB and OMB issued control number 3060-0697. For FCC Forms 175 and 600, control numbers 3060-0600 and 3060-0623, respectively, have been issued.

Statutory authorization for the rule

The final rule was issued under authority of sections 4(i), 303(r), 309(c), 309(j), and 332 of the Communications Act. (47 U.S.C. §§ 154(i), 303(r), 309(c), 309(j), and 332)

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.

The Commission did not identify any other statutes or executive orders imposing requirements on the rulemaking.