



**United States
General Accounting Office
Washington, D.C. 20548**

Office of the General Counsel

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May 1, 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: Use of the 28 GHz and 31 GHz
Bands for Local Multipoint Distribution Service**

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 28 GHz and 31 GHz Bands for Local Multipoint Distribution Service" (CC Docket No. 92-297; FCC 97-82). We received the rule on April 16, 1997. It was published in the Federal Register as a final rule on April 29, 1997. 62 Fed. Reg. 23148.

The final rule establishes service and competitive bidding rules for the new Local Multipoint Distribution Service, a fixed broadband point-to-multipoint microwave service for which the rule allocates additional spectrum in the 31.0-31.3 GHz band.

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: 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
"USE OF THE 28 GHZ AND 31 GHZ BANDS FOR
LOCAL MULTIPOINT DISTRIBUTION SERVICE"
(CC Docket No. 92-297; FCC 97-82)

(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 and the analysis was incorporated in the preambles to the various notices of proposed rulemaking cited under the Administrative Procedure Act below.

The preamble to the final rule contains the 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, including modifications made to the proposed rule.

The Small Business Administration (SBA) commented on the Initial Regulatory Flexibility Analysis and stated that the proposed designation, on a primary protected basis, of the 31.0-31.3 GHz to Local Multipoint Distribution Service (LMDS), failed to consider the impact on the existing users of the spectrum, which SBA argued were mainly small entities. SBA contends that the Commission underestimated the number of small entities that are incumbent licensees. The Commission has modified the proposed rule and the final rule now contains a band-sharing plan that provides incumbent licensees with protection from LMDS on a portion of the 31 GHz band, while designating the entire band for LMDS.

(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. The Commission published the First Notice of Proposed Rulemaking (58 Fed. Reg. 6400, January 28, 1993), the Second Notice of Proposed Rulemaking (60 Fed. Reg. 13102, March 10, 1995), the Third Notice of Proposed Rulemaking (60 Fed. Reg. 43740, August 23, 1995), and the Fourth Notice of Proposed Rulemaking (61 Fed. Reg. 39425, July 29, 1996) requesting comments on the proposed rule.

The preamble to the final rule discusses the comments the Commission received, any action it took as a result of the comments, and the reasons why it rejected certain actions suggested in some of the comments.

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

The final rule contains a modified information collection which is subject to review by the Office of Management and Budget under the Paperwork Reduction Act. In the preamble to the final rule, the Commission explains the need for the information and discusses the burden estimates related to the collection.

The information to be collected will be used to determine whether the applicant is qualified legally and technically to be licensed to use the spectrum. It is estimated that the annual burden will be 30,381.5 hours at an annual cost of \$2,025,400.

The collection had been previously approved before modification and issued OMB No. 3060-0531. The Commission is asking OMB for reinstatement of the approval, which has expired. Public and agency comments are requested until May 29, 1997, and OMB action is due June 30, 1997, the effective date of the final rule.

Statutory authorization for the rule

The final rule is issued pursuant to sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 257, 303(r), and 309(j).

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.