



United States
General Accounting Office
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Office of the General Counsel

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June 24, 1998

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: Reconsideration of the Rules and Policies for the 220-222 MHz Radio 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 "Reconsideration of the Rules and Policies for the 220-222 MHz Radio Service" (PR Docket No. 89-552, GN Docket No. 93-252, and PP Docket No. 92-253; FCC 98-93). We received the rule on June 11, 1998. It was published in the Federal Register as a final rule on June 12, 1998. 63 Fed. Reg. 32580.

The final rule responds to petitions for reconsideration or clarification of two Orders previously adopted by the Commission concerning the 220-222 MHz radio service. The final rule reaffirms the Second Report and Order, released January 26, 1996, with one clarification. Also, the final rule generally reaffirms the Third Report and Order, released March 12, 1997, but (1) eliminates the 220 MHz service spectrum efficiency standard; (2) allows existing 220 MHz licensees to make modifications to their authorizations so long as such modifications do not expand their 38 dBu service contour, and allows such licensees to convert their site-by-site authorizations to a single license; (3) eliminates installment payment plans for small and very small businesses and increases the level of bidding credits; and (4) modifies the rules to permit auction winners to make their final payments within

10 business days after the applicable deadline, provided that they also pay a late fee.

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 Judy England-Joseph, Director for Housing and Community Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Kathleen Fagan
AMD-PERM
Federal Communications Commission

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE

ISSUED BY

THE FEDERAL COMMUNICATIONS COMMISSION

ENTITLED

"RECONSIDERATION OF THE RULES AND POLICIES
FOR THE 220-222 MHZ RADIO SERVICE"

(PR Docket No. 89-552, GN Docket No. 93-252,
and PP Docket No. 92-253; FCC 98-93)

(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 had prepared Initial and Final Regulatory Flexibility Analyses in connection with the prior rulemakings and the preamble to this final rule contains a Supplemental Final Regulatory Flexibility Analysis discussing the impact of the changes made by the rule.

In its discussion of the information required under the Act, the Commission discusses the steps taken to minimize the economic impact on small entities, including allowing licensees to convert their site-by-site licenses to a single license and the elimination of installment payments in conjunction with an increase in the level of bidding credits. The Commission believes the bidding credits are a better alternative to assist small entities as well as ensure provision of the new services to the public.

(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 results from the Commission's consideration of petitions of reconsideration which were filed following the Commission's issuance of the prior

rulemaking dealing with the 220 MHz portion of the spectrum. That prior rule was issued using the notice and comment procedures contained in 5 U.S.C. § 553.

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

The final rule contains a new information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission has requested an emergency clearance from OMB.

In the final rule's preamble, the Commission discusses the need for the information and the burden estimate related to the collection. The Commission estimates that there will be 18,400 responses with an estimated response time of 30 minutes to 12 hours for a total annual estimated burden of 44,850 hours.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 4(i), 4(j), 303(d), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 303(d), 303(r), 309(j), 332, and 405.

Executive Order No. 12866

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