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Office of the General Counsel

B-278093

October 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: The 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 "The Local Multipoint Distribution Service" (CC Docket No. 92-297; FCC 97-323). We received the rule on September 17, 1997. It was published in the Federal Register as a final rule on September 17, 1997. 62 Fed. Reg. 48787.

The final rule modifies the competitive bidding rules adopted in the Second Report and Order<sup>1</sup> in CC Docket No. 92-297 by: (1) not making installment payments available; (2) adopting an additional "very small business" category and redesignating as "entrepreneurs" the existing category of entities with average gross revenues for the preceding 3 years of more than \$40 million but not more than \$75 million; and (3) adopting a bidding credit of 45 percent for very small

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<sup>1</sup>This major rule was the subject of our report to Congress entitled "Redesignating the 27.5-29.5 GHz Frequency Band, Reallocating the 29.5-30.0 GHz Frequency Band, and Establishing Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services." (OGC-96-44, B-274381, Sept. 13, 1996)

businesses and increasing the bidding credits available to small businesses and entrepreneurs to 35 percent and 25 percent, respectively (from their previous respective levels of 25 percent and 15 percent).

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. Peter W. Herrick  
AMD-Performance Evaluation and  
Records Management  
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  
"THE LOCAL MULTIPOINT DISTRIBUTION SERVICE"  
(CC Docket No. 92-297; FCC 97-323)

(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 a Final Regulatory Flexibility Analysis (FRFA) in connection with the Second Report and Order which this rule revises. Therefore, the Commission incorporates the prior FRFA into this rulemaking and supplements it by addressing the impact of the matters considered in this final rule.

The Commission discusses the impact of the category of "very small businesses" that is established in the final rule. While the Commission cannot accurately predict how many entities will qualify for this status, in the FRFA it utilized the estimate of the number of applicants that are small businesses for Multipoint Distribution Service (MDS), which uses the same standards as the Local Multipoint Distribution Service. The number of applicants for the MDS auction totaled 154, of which 141 (92 percent) were small businesses. For the broadband PCS F Block auction, which had a "very small business" category, 53.9 percent of the applicants were very small businesses.

In order to further minimize the impact on small entities, the Commission has already eliminated installment payment plans, it has determined that the raising of bidding credits for small entities and the addition of the above-mentioned category of "very small business" will ensure provision of the new services to the public and assist small entities.

(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 in 5 U.S.C. § 553. The Commission issued a notice of proposed rulemaking by publication in the Federal Register on April 7, 1997. 62 Fed. Reg. 16514.

The comments the Commission received in response to this notice and any actions it took as a result of the comments are discussed in the final rulemaking order.

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

The final rule does not contain any new or modified information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

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