



Office of the General Counsel

B-274332

September 11, 1996

The Honorable Larry Pressler
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: Policies and Rules Concerning
Children's Television Programming/Revision of Programming Policies for
Television Broadcast Stations

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Federal Communications Commission, entitled "Policies and Rules Concerning Children's Television Programming/Revision of Programming Policies for Television Broadcast Stations" (FCC 96-335; MM Docket No. 93-48). We received the rule on August 21, 1996. It was published in the Federal Register as a final rule on August 27, 1996. 61 Fed. Reg. 43981.

The rule is designed to strengthen the Commission's enforcement of the Children's Television Act of 1990 (CTA). It provides a safe harbor processing guideline for processing the CTA portion of broadcasters' license renewal applications, adopts a definition of programming specifically designed to educate and inform children (Core Programming), and requires broadcasters to provide better information to the public about their Core Programming.

Enclosed is our assessment of the Federal Communications Commission's compliance with the procedural steps required by sections 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 W. Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John H. Anderson, Director of Transportation and Telecommunications 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
"POLICIES AND RULES CONCERNING CHILDREN'S TELEVISION
PROGRAMMING/REVISION OF PROGRAMMING POLICIES FOR TELEVISION
BROADCAST STATIONS"
(FCC 96-335; MM Docket No. 93-48)

(i) Cost-benefit analysis

The Commission has advised our Office that it was not required to prepare and did not prepare a cost-benefit analysis of the rule.

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

Section 603: Initial Regulatory Flexibility Analysis

The proposed rulemaking, 60 Fed. Reg. 20590 (April 26, 1995), incorporated an initial regulatory flexibility analysis of the expected impact on small entities.

The analysis included in the proposed rulemaking provides the information required by paragraphs 603(b)(1) through (3). It describes the reasons for the proposed agency action, and its objectives and legal basis. It also describes the total number of entities of all sizes that may be affected by the rule. (See below.) The analysis also requests comments regarding the reporting and record-keeping requirements of the proposed rule. In accordance with paragraph 603(b)(5), the Commission notes that the proposed rule does not duplicate, overlap or conflict with any relevant federal rule. Also, it states that the proposed rule has been designed to minimize the impact on small entities while retaining the benefits of encouraging television broadcast programming that satisfies the requirements of the Children's Television Act of 1990.

Section 604: Final Regulatory Flexibility Analysis

The preamble to the final rule includes the full text of the final regulatory flexibility analysis. 61 Fed. Reg. 43992. The analysis includes the information required by paragraph 604(a) by summarizing and evaluating relevant comments received.

A major portion of the analysis describes the steps the Commission took in attempting to determine the number of small entities affected by the rule based on

various criteria, databases and Census Bureau information. This was necessary because of the inadequacy of the Small Business Administration's definition for television broadcasting stations, the annual receipt data collected by the Commission, and the classification of stations with network affiliation. Under various analyses, the worst case scenario would be the application of the rule to a low of 771 commercial stations (68 percent of all stations) to a high of 1,155 commercial and noncommercial stations (78 percent of all stations). The Commission believes that these estimates greatly overstate the number of small entities affected and reserves the right to adopt a more suitable definition of "small business" as applied to television broadcast stations at a later date following the conclusion of several pending proceedings at the Commission seeking comment on the definition of and data relating to small businesses and compliance with section 601(3) of the Regulatory Flexibility Act.

The final analysis discusses the comments received and the alternatives considered and the steps taken to minimize the impact on small entities. It appears that many of these changes will also reduce the burden on non-small entities.

These steps include the deletion of the requirement in the Notice of Proposed Rulemaking that a broadcast station utilize an icon for the identification of core programming. The method of identification is now at the discretion of the stations. The Commission also rejected a proposal that stations consult with educational experts in order for a program to qualify as core programming. Finally, the Commission will issue a standardized reporting form for the quarterly children's programming report to ease the information collection burden on small entities.

The final analysis was forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

Section 605: Avoidance of duplicative or unnecessary analysis

The Commission did not invoke any of the exemptions or special procedures authorized by section 605 in preparing its regulatory flexibility analysis.

Section 607: Preparation of Analysis

The Commission's analysis used both quantifiable and general descriptions of the effects of the rule on small entities.

Section 609: Participation by small entities

In addition to the actions required by 5 U.S.C. § 553, the Commission also made available a complete copy of the proposed and final rulemaking materials via the Internet.

(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 Commission promulgated the rule under the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published in the Federal Register on April 26, 1995. 60 Fed. Reg. 20586. The Commission received numerous formal and informal comments on the proposed rule during the comment period which was extended twice. In the preamble to the final rule, the Commission responds to issues raised by the comments.

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

The rule requires broadcasters to maintain a file for public inspection containing a Children's Television Programming Report and to identify programs specifically designed to educate and inform children at the beginning of those programs and to furnish such information to the publishers of program guides. These represent a new and a modified information collection that has been submitted to the Office of Management and Budget (OMB) for its review and approval. Comments are solicited from the general public, other federal agencies, and OMB until October 28, 1996.

The preamble to the final rule contains significant information about the proposed collection of information including the reasons for collecting the information, the type and number of respondents, and the estimated annual burden. 61 Fed. Reg. 43991.

The portion of the rule containing the above collection requirements will not become effective until OMB approval is obtained.

Statutory authorization for the rule

The rule is issued pursuant to the authority contained in Sections 4(i) and (j), 303(r), 308 and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i) and (j), 303(r), 308 and 403, as amended, and the Children's Television Act of 1990, 47 U.S.C. §§ 303b(a), 303b(b) and 394.

Executive Order No. 12866

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