



441 G St. N.W.
Washington, DC 20548

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January 23, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Unlicensed Use of the 6 GHz Band; and Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*

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 (FCC) titled “Unlicensed Use of the 6 GHz Band; and Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz” (FCC 23-86). We received the rule on November 8, 2023. It was published in the *Federal Register* as a final rule on January 8, 2024. 89 Fed. Reg. 874. The effective date of the final rule is March 8, 2024.

According to FCC, this final rule builds on the 6 GHz band unlicensed rules by permitting very low power (VLP) devices in the U-NII-5 (5.925-6.425 MHz) and U-NII-7 (6.525-6.875 MHz) portions of the 6 GHz band. FCC stated that it will limit VLP devices to low power levels and subject them to other technical and operational requirements that will permit these devices to operate across the United States while protecting incumbent licensed services that operate in the 6 GHz band from harmful interference. FCC also stated that it is taking action that addresses a remand from the United States Court of Appeals for the District of Columbia Circuit concerning an issue raised by television broadcasters. FCC stated further that it finds that broadcasters’ unsubstantiated claims of interference in the 2.4 GHz band do not warrant any changes to the 6 GHz rules.

Enclosed is our assessment of FCC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ronald Repasi
Chief, Office of Engineering and Technology
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
TITLED
“UNLICENSED USE OF THE 6 GHZ BAND; AND
EXPANDING FLEXIBLE USE IN MID-BAND SPECTRUM BETWEEN 3.7 AND 24 GHZ”
(FCC 23-86)

(i) Cost-benefit analysis

According to the Federal Communications Commission (FCC), enabling new unlicensed use types in the U-NII-5 and U-NII-7 bands will yield important economic benefits and will allow more extensive use of technologies, such as Wi-Fi and Bluetooth, by American consumers. FCC stated that a report estimated that making the 6 GHz band accessible to very low power (VLP) devices would produce over \$39 billion in economic value over five years. FCC also stated that even if the final rule leads to expected benefits of 5 percent of \$39 billion, or approximately \$2 billion—a figure FCC finds to be below the likely benefits of the final rule—the expected benefits will be well in excess of the costs. FCC stated further that there are presently no VLP devices in operation, thus the final rule it is promulgating does not have cost implications for the existing unlicensed device ecosystem. Lastly, FCC stated that the harmful interference risk to incumbent operators is insignificant, and FCC is not imposing any specific requirements on any incumbent operator, thus there is no cost implication on them.

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

In its submission to us, FCC included a Final Regulatory Flexibility Analysis for this final rule. The analysis included (1) a statement of the need for and objectives of the final rule; (2) a summary of significant issues raised by public comments; (3) a response to comments by the Chief Counsel for Advocacy of the Small Business Administration; (4) a description and estimate of the number of the small entities subject to the rule; (5) a description of the projected reporting, recordkeeping, and other compliance requirements for small entities; and (6) a description of steps taken to minimize the significant economic impact on small entities, and alternatives considered.

(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, FCC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the

Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FCC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 24, 2020, FCC released a proposed rule. *Report and Order and Further Notice of Proposed Rulemaking*, 85 Fed. Reg. 31390 (May 26, 2020) (35 FCC Rcd. 3852). FCC stated that it received comments from numerous parties in favor of permitting unlicensed VLP operations in the 6 GHz band as well as parties representing the interests of incumbent licensees raising concerns about potential harmful interference from the proposed unlicensed VLP operations. FCC addressed comments in a document included in its submission to us. This document also includes a list of the commenters. See *Second Report and Order, Second Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order on Remand*, ET Docket No. 18-295 and GN Docket No. 17-183; FCC 23-86, (Nov. 1, 2023).

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FCC stated that this final rule does not contain new or modified information collection requirements subject to the Act.

Statutory authorization for the rule

FCC promulgated this final rule pursuant to sections 154, 302a, 303, 304, 307, 336, 544a, and 549 of title 47, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FCC is not subject to the Act.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FCC is not subject to the Act.