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B-336943

December 30, 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: Use of the 5.850–5.925 GHz Band*

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) entitled “Use of the 5.850–5.925 GHz Band” (FCC 24-123). We received the rule on December 5, 2024. It was published in the *Federal Register* on December 13, 2024. 89 Fed. Reg. 100838. The effective date of the rule is February 11, 2025.

According to FCC, the rule adopts rules and takes other steps to further address the transition of 5.9 gigahertz Intelligent Transportation System operations from Dedicated Short Range Communications-based technology to cellular-vehicle-to-everything-based technology. FCC further stated that the rule is a summary of its *Second Report and Order* in ET Docket No. 19-138, FCC 24-123.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads 'Shirley A. Jones'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Michael Ha
Policy and Rules Division Chief
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“USE OF THE 5.850–5.925 GHZ BAND”
(FCC 24-123)

(i) Cost-benefit analysis

The Federal Communications Commission (FCC) discussed the costs and benefits of this rule in its *Second Report and Order* in ET Docket No. 19-138, FCC 24-123. See 89 Fed. Reg. 100838, 100850 (Dec. 13, 2024). In the rule, FCC explained that it had concluded in the *First Report and Order* that the expected \$17.2 billion of benefits outweighed the costs for the time period 2022 to 2025. *Id.* at 100850. However, because of court challenges to such Order, some benefits and costs could only be realized over a postponed time period, following issuance of the *Second Report and Order*. *Id.* Accordingly, FCC concluded that the benefits continue to outweigh costs for the *Second Report and Order*. *Id.*

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

FCC prepared a Final Regulatory Flexibility Analysis (FRFA), which is included in Appendix B of the *Second Report and Order*. 89 Fed. Reg. at 100838. The analysis included (1) a statement of the need for and objectives of the *Second Report and Order*; (2) a statement that no comments were filed specifically addressing the proposed rules and policies in the Initial Regulatory Flexibility Analysis; (3) a statement that the Small Business Administration’s Chief Counsel for Advocacy did not file any comments in response to the proposed rules; (4) a description and estimate of the number of small entities to which the rules will apply; (5) a description of projected reporting, recordkeeping, and other compliance requirements for small entities; (6) steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and (7) a statement that FCC will provide a report to Congress that includes the FRFA.

(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 February 6, 2020, FCC published a proposed rule. 85 Fed. Reg. 6841. On May 3, 2021, FCC published a further notice of proposed rulemaking. 86 Fed. Reg. 23323. FCC responded to comments in this rule. 89 Fed. Reg. at 100839–100850.

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

In its submission to us, FCC stated this rule does not contain an information collection requiring OMB approval under the Act.

Statutory authorization for the rule

FCC promulgated this rule pursuant to sections 151, 154(i), 301, 302, 303, 309, 316, and 332 of title 47 of the United States Code. See 89 Fed. Reg. at 100850.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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