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Office of the General Counsel

B-277383

July 28, 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: Assessment and Collection of  
Regulatory Fees for Fiscal Year 1997

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, entitled "Assessment and Collection of Regulatory Fees for Fiscal Year 1997" (MD Docket No. 96-186, FCC 97-215). We received the rule on June 30, 1997. It was published in the Federal Register as a final rule on July 11, 1997. 62 Fed. Reg. 37408.

The Commission's Report and Order adopts rule changes to revise its Schedule of Regulatory Fees in order to recover the costs specified by Congress for its enforcement, policy and rulemaking, international activities, and user information services. 47 U.S.C. § 159(a).

Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. 47 U.S.C. § 159(b)(2). For fiscal year 1997, Congress determined that the Commission should recover \$152,523,000 in costs, an amount that is 20.6 percent higher than that required in fiscal year 1996.

Therefore, the Commission had to revise its fee schedule in order to meet the increased revenue requirements.

In addition to adjusting the fee schedule to ensure collection of the \$152,523,000, the Report and Order also amends the fee schedule so as to assess fees upon licensees and/or regulatees of services not previously subject to payment of fees, to simplify and streamline the fee schedule, and to clarify and/or revise certain payment procedures as provided for in section 9(b)(3) of the Communications Act of 1934, as amended. 47 U.S.C. § 159(b)(3).

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 Federal Communications Commission complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. 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  
"ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FISCAL YEAR  
1997"  
(MD Docket No. 96-186, FCC 97-215)

(i) Cost-benefit analysis

The Commission stated in its submission to us that it was not required to prepare and did not prepare a cost-benefit analysis.

(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, 62 Fed. Reg. 10793 (March 10, 1997), incorporated an initial regulatory flexibility analysis of the expected impact on small businesses. The Commission sought written public comments on the proposed rulemaking, including comments on the initial regulatory flexibility analysis.

The analysis included in the proposed rulemaking provides the information required by paragraphs 603(b)(1) and (2). It describes the reasons for the proposed agency action and its objectives and legal basis. The information required by paragraphs 603(b)(3) and (4) concerning an estimate of the classes of small entities subject to the Report and Order and the projected reporting, record-keeping and other compliance requirements of the proposed rule is also included. In accordance with section 603(b)(5), the Commission notes that the proposed Report and Order does not duplicate, overlap, or conflict with any other relevant federal rule.

Finally, the Commission solicited comments on the alternative methods of assessing the regulatory fees discussed in the proposed rule in compliance with section 603(c).

Section 604: Final Regulatory Flexibility Analysis

Appendix A to the Report and Order includes the full text of the Commission's final regulatory flexibility analysis. 62 Fed. Reg. 37408 at 37424. The Commission satisfies the requirements of section 604(a). It describes the need for and objective of the Report and Order. It also describes the comments submitted in response to

the initial regulatory flexibility analysis regarding the definition of small entities Specialized Mobile Radio licensees who are subject to regulatory fee payments. The analysis describes the small entities affected by the rulemaking and the projected reporting, record-keeping and other compliance requirements.

Finally, the Commission describes the steps taken to minimize the economic impact on 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 Commission promulgated the rule under the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on March 10, 1997. 62 Fed. Reg. 10793. The Commission received comments and reply comments on the rule from 26 commenters, representing licensees and trade associations.

The Commission indicates that it gave full consideration to the comments filed by all interested parties and, in response to these comments, provided a more detailed description of the new cost accounting system used to determine how fees will be assessed. A detailed discussion of the comments and the Commission's consideration appears at 62 Fed. Reg. 37409-37413.

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

This Final Report and Order is subject to the Act since the Commission requires licensees to complete and file a form FCC 159 with the payment of their annual fee. The Commission has received Office of Management and Budget clearance for this information collection requirement (OMB # 3060-0589).

Statutory authorization for the rule

Authorization for this rulemaking is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j) and 159 and 303(r). In addition, Congress specifically mandated that the Commission collect \$152,523,000 in regulatory fees for FY97 to recover the costs of enforcement, policy and rulemaking, international and user information activities. Pub. L. No. 104-208.

The Commission did not identify any other statutes or executive orders imposing requirements relevant to the Report and Order.