APPENDIX A

List of the Parties

Petitions for Reconsideration

American Mobile Telecommunications Association, Inc. ("AMTA")
Automobile Club of Southern California ("ACSC")
City of Los Angeles Police Department ("LAPD")
Entergy Services, Inc. and Delmarva Power (collectively, "Entergy/Delmarva")
Genesee Business Radio Systems, Inc. ("Genesee")
Industrial Telecommunications Association, Inc. ("ITA")
Personal Communications Industry Association ("PCIA")
Small Business in Telecommunications ("SBT")

Supplement to Petitions for Reconsideration

Small Business in Telecommunications ("SBT")

Opposition to Supplement to Petitions for Reconsideration

Nextel Communications, Inc. ("Nextel")

Opposition to Petitions

Nextel Communications, Inc. ("Nextel")

Replies to Opposition
American Mobile Telecommunications Association, Inc. ("AMTA")
Automobile Club of Southern California ("ACSC")
Chadmoore Wireless Group, Inc. ("Chadmoore")
Duke Energy ("Duke")
Mobex Communications, Inc. ("Mobex")
Personal Communications Industry Association ("PCIA")
Small Business in Telecommunications ("SBT")

Comments on Petitions for Reconsideration

Industrial Telecommunications Association, Inc. ("ITA")
UTC ("UTC")

Ex Parte Filings

American Mobile Telecommunications Association	October 29, 1998
American Petroleum Institute ("API")	March 24, 1999
Chadmoore Wireless Group, Inc.	October 21, 1997
Chadmoore Wireless Group, Inc.	November 21, 1997
Industrial Telecommunications Association	July 15, 1999
Nextel Communications, Inc.	November 14, 1997
Nextel Communications, Inc.	April 10, 1998
Personal Communications Industry Association	February 11, 1999
Personal Communications Industry Association	July 15, 1999
Personal Communications Industry Association	September 29, 1999
UTC	January 30, 1998

APPENDIX B

Final Rules

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES

1. Section 90.615 is revised to read as follows:

§ 90.615 Spectrum Blocks available in the General Category for 800 MHz SMR

General Category

Table 1 — 806-821/851-866 MHz Band Channels (150 Channels):

Spectrum Block	Channel Nos.
D	1 through 25
D1	26 through 50
E	51 through 75
E1	76 through 100
F	101 through 125
F1	126 through 150

2. Section 90.619 is amended by revising paragraphs (a)(5), (b)(8), (b)(9), (b)(10), and (b)(11) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S/Canada border areas.

(a) * * *

(5) * * *

TABLE 4A - UNITED STATES-MEXICO BORDER AREA, SMR AND GENERAL CATEGORIES 806-821/851-866 MHZ BAND (95 CHANNELS)

EA-Based SMR Category (83 Channels)

Spectrum Block	Offset Channel Nos.
A	398-399-400
B	429-431-433-435-437-439-469-471-473-475-477-479

C	509-511-513-515-517-519-549-551-553-555-557-559-589-591-593-595-597-599
G	229-272-349
H	230-273-350
I	231-274-351
J	232-278-352
K	233-279-353
L	234-280-354
M	235-309-358
N	236-310-359
O	237-311-360
P	238-312-389
Q	239-313-390
R	240-314-391
S	269-318-392
T	270-319-393
U	271-320-394
V	228-268-308-348-388

General Category (12 Channels)

Spectrum Block	Offset Channel Nos.
D	275-315
D1	355-395
E	276-316
E1	356-396
F	277-317
F1	357-397

(b) * * *

(8) * * *

TABLE 12 — SMR AND GENERAL CATEGORIES--95 Channels
[Regions 1, 4, 5, 6]

EA-Based SMR Category (90 Channels)

Spectrum Block	Channel Nos.
A	None
B	463 through 480
C	493 through 510, 523 through 540, 553 through 570, 583 through 600

G through V	None

General Category (5 Channels)

Spectrum Block	Channel Nos.
D	None
D1	30
E	60
E1	90
F	120
F1	150

(9) * * *

TABLE 16--SMR AND GENERAL CATEGORIES--60 Channels
[Region 2]

SMR Category (55 Channels)

Spectrum Block	Channel Nos.
A	None
B	None
C	518 through 528, 536 through 546, 554 through 564, 572 through 582, 590 through 600
G through V	None

General Category (5 Channels)

Spectrum Block	Channel Nos.
D	18
D1	36
E	54-72
E1	90
F	None
F1	None

(10) * * *

TABLE 20— SMR AND GENERAL CATEGORIES (135 Channels)
[Region 3]

SMR Category (120 Channels)

Spectrum Block	Channel Nos.
A	417 through 420
B	421 through 440, 457 through 480
C	497 through 520, 537 through 560, 577 through 600
G through V	None

General Category (15 Channels)

Spectrum Block	Channel Nos.
D	38-39-40
D1	158-159
E	78-79-80
E1	160-198
F	118-119-120
F1	199-200

(11) * * *

TABLE 24--(REGIONS 7,8) SMR AND GENERAL CATEGORIES — 190 Channels

SMR Category (172 Channels)

Spectrum Block	Channel Nos.
A	389 through 400
B	425 through 440, 465 through 480
C	505 through 520, 545 through 560, 585 through 600
G	155-229-269-309-349
H	156-230-270-310-350
I	157-231-271-311-351
J	158-232-272-312-352
K	159-233-273-313-353
L	160-234-274-314-354
M	195-235-275-315-355
N	196-236-276-316-356
O	197-237-277-317-357

P	198-238-278-318-358
Q	199-239-279-319-359
R	200-240-280-320-360
S	225-265-305-345-385
T	226-266-306-346-386
U	227-267-307-347-387
V	228-268-308-348-388

General Category (18 Channels)

Spectrum Block	Channel Nos.
D	35 through 37
D1	38 through 40
E	75 through 77
E1	78 through 80
F	115 through 117
F1	118 through 120

* * * * * *

3. Section 90.621 is amended by revising paragraph (b) introductory text, and paragraphs (b)(1) and (b)(3) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be afforded protection solely on the basis of fixed distance separation criteria. For Channel Blocks A, through V, as set forth in Section 90.917(d), the separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks D through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (see Section 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi) The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks D through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been

granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks D through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * *

4. Section 90.683 is revised to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

(a) *General Provisions.* These provisions apply to "incumbent licensees", all 800 MHz licensees authorized in the 806-821/851-866 MHz band who obtained licenses or filed applications on or before December 15, 1995.

(b) *Spectrum Blocks A through V.* An incumbent licensee's service area shall be defined by its originally-licensed 40 dBμV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBμV/m field strength contour. The "originally-licensed" contour shall be calculated using the maximum ERP and the actual height of the antenna above average terrain (HAAT) along each radial. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBμV/m field strength contour without prior notification to the Commission so long as their original 22 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 40 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 C.F.R. § 90.621(b).

(c) *Special Provisions for Spectrum Blocks D through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The "originally-licensed" contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-

channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 C.F.R. § 90.621(b).

(d) *Consolidated License.*

(1) *Spectrum Blocks A through V.* Incumbent licensees operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 MHz SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 22 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

(2) *Special Provisions for Spectrum Blocks D through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

5. Section 90.903 is amended by revising paragraph (b) to read as follows:

§ 90.903 Competitive bidding mechanisms.

* * * * *

(b) *Grouping.* All EA licenses for Spectrum Blocks A through V will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative method of grouping these licenses for auction.

* * * * *

APPENDIX C

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*) in this proceeding.[1] The Commission sought written public comment on the proposals in the *Second Further Notice*, including the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix D of the subsequent *Second Report and Order* in this proceeding.[2] The Commission received eight petitions for reconsideration in response to the *800 MHz Second Report and Order*. The *Memorandum Opinion and Order on Reconsideration* addresses those reconsideration petitions. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the *800 MHz Second Report and Order* and addressed in this *Memorandum Opinion and Order on Reconsideration*. This Supplemental FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[3]

A. Need for and Purpose of this Action:

2. In the *800 MHz Second Report and Order*, the Commission established a flexible regulatory scheme for the 800 MHz Specialized Mobile Radio (SMR) service to promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The rules adopted in the *800 MHz Second Report and Order* also implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services (CMRS) as described in Sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(n), 332 (Communications Act), as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993. In the *Second Report and Order*, the Commission also adopted rules regarding competitive bidding for the remaining 800 MHz SMR spectrum based on Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which authorizes the Commission to use auctions to select among mutually exclusive initial applications in certain services, including the 800 MHz SMR service. The actions taken in this *Memorandum Opinion and Order on Reconsideration* are in response to

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[1] Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1663 (1995) (collectively, "*800 MHz Report and Order*").

[2] Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Second Report and Order*, 12 FCC Rcd 19079, 19208 (1997) ("*800 MHz Second Report and Order*").

[3] Congress amended the RFA, 5 U.S.C. § 601 *et seq.*, by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

petitions for reconsideration or clarification of the *800 MHz Second Report and Order*. Throughout this proceeding, we have sought to promote Congress's goal of regulatory parity for all commercial mobile radio services, and to encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, we have sought to establish rules for the SMR services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

B. Summary of Significant Issues Raised in Response to the Final Regulatory Flexibility Analysis:

3. No reconsideration petitions were submitted in response to the FRFA. However, small business-related issues were raised indirectly by some parties filing petitions for reconsideration of the *800 MHz Second Report and Order*. Several petitions concerned the potential impact of some of the Commission's proposals on small entities, especially on certain incumbent 800 MHz SMR licensees. We describe below those small entity-related issues. In Section E, *infra*, we describe our actions taken in response to petitions that raised small entity-related issues, as well as significant alternatives considered.

4. In the *800 MHz Second Report and Order*, the Commission adopted geographic area licensing for the lower 230 800 MHz SMR channels in order to facilitate the evolution of larger 800 MHz SMR systems covering wider areas and offering commercial services to rival other wireless telephony services. Some petitioners that were not SMR licensees opposed this plan arguing that it was unsuitable to the needs of smaller, private systems, which do not seek to cover large geographic areas in the manner of commercial service providers.[4]

5. In the *800 MHz Second Report and Order*, the Commission adopted a portion of a proposal set forth by a number of incumbent 800 MHz SMR licensees ("Industry Proposal") and allotted three contiguous 50-channel blocks from the former General Category block of channels. Some petitioners argued that auctioning such large contiguous blocks would not suit the needs of smaller SMR and non-SMR systems, which typically trunk smaller numbers of non-contiguous channels.[5] These petitioners argued that large blocks of contiguous channels could be prohibitively expensive to bid for at auction, thereby limiting the opportunities for smaller operators to take advantage of geographic area licensing. One petitioner argued that the 150 General Category Channels should be auctioned on a single-channel basis.[6]

6. In the *800 MHz Second Report and Order*, we adopted construction requirements for the lower 230 channels requiring EA licensees to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population within five years of license

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[4] *See* UTC Petition at 4-7; ACSC Petition at 3-4.

[5] AMTA Petition at 8-9; PCIA Petition at 12; ACSC Petition at 9; SBT Petition at 6-7.

[6] PCIA Petition at 10. *See also* ACSC Petition at 9.

grant.[7] However, as an alternative to meeting applicable construction requirements, we allowed EA licensees in the lower 230 channels to provide "substantial service" to their geographic license area within five years of license grant.[8] The Commission found that more flexible construction requirements will enhance rapid deployment of new technologies and services and will expedite service to rural areas.[9] We stated that a licensee could satisfy the substantial service requirement by demonstrating that it is providing a technologically innovative service or that it is providing service to unserved or underserved areas.[10] Two petitioners argued that the Commission should eliminate the substantial service test and impose specific channel usage requirements.[11]

7. In the *800 MHz Second Report and Order*, the Commission concluded that competitive bidding is an appropriate licensing mechanism for the Lower 80 channels and the General Category channels. Several petitioners request that the Commission use procedures other than competitive bidding to license the 800 MHz SMR service.[12] In essence, petitioners contend that this band does not fit within the Congressional criteria for auctions because the General Category and lower 80 channels of the 800 MHz SMR band do not meet the original statutory criteria governing auctionability contained in Section 309(j) of the Communications Act, or the criteria as amended by the enactment of the Balanced Budget Act of 1997.[13] Several petitioners contend that Section 309(j)(6)(E) of the Communications Act prohibits the Commission from conducting an auction unless it first attempts alternative licensing mechanisms to avoid mutual exclusivity.[14]

8. Several petitioners contend that the Commission should limit participation in the 800 MHz SMR auction to SMR and/or non-SMR incumbents.[15] PCIA, for example, believes that the Commission should limit eligibility for geographic area licenses to those incumbent licensees who provide coverage to 70 percent of their market areas. It further argues that the rules adopted in the

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[7] *800 MHz Second Report and Order*, 12 FCC Rcd at 19094-95, ¶ 34.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] PCIA Petition at 12-15; SBT Petition at 10.

[12] *See* SBT Petition at 14; UTC Comments at 2-3; ACSC Petition at 7; ITA Petition at 4-6.

[13] Balanced Budget Act of 1997, P.L. No. 105-33, 111 Stat. 251 (1997), to be codified in relevant part at 47 U.S.C. §§ 309(j)(1), (2) ("Balanced Budget Act").

[14] *See* SBT Petition at 14-15; Entergy/Delmarva Petition at 3; ACSC Petition at 6-7; ITA Petition at 7-9; UTC Comments at 2-3.

[15] PCIA Petition at 3; Entergy/Delmarva Petition at 3; PCIA Reply Comments at 1.

800 MHz Second Report and Order will encourage the filing of applications for anti-competitive or speculative purposes, which may result in high license costs and degradation of service to the public.[16]

9. Two petitioners contended that the Commission should retain installment payments for the lower 80 and General Category 800 MHz SMR licenses on the grounds that installment payments are the most significant option for the provision of meaningful small business participation in the spectrum auctions as they allow SMR operators to pay for the license out of the profits generated through the provision of SMR service.[17] In the *Part 1 Third Report and Order*, released in December of 1997, the Commission subsequently determined that installment payments should not be used in the immediate future as a means of financing small-business participation in the auction program.[18]

10. Finally, one petitioner argued that, in addition to small business provisions, separate bidding credit provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels.[19]

C. Description and Number of Small Entities to Which the Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by our rules.[20] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[21] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[22] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[23] A small

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[16] PCIA Petition at 3-6.

[17] AMTA Petition at 10-12; AMTA Reply to Opposition at 1-2. *See also* SBT Reply to Opposition at 4-5.

[18] Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-92, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 399-400, ¶ 38 (rel. December 31, 1997) ("*Part 1 Third Report and Order*").

[19] SBT Petition at 18.

[20] 5 U.S.C. § 603(b)(3).

[21] 5 U.S.C. § 601(6).

[22] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[23] Small Business Act, 15 U.S.C. § 632 (1996).

organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[24] Nationwide, as of 1992, there were approximately 275,801 small organizations.[25] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[26] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[27] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[28] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

12. The rules adopted in the *Memorandum Opinion and Order on Reconsideration* will affect all small entities that hold or seek to acquire 800 MHz SMR licenses. Under these rules, Economic Area (EA) licenses will be granted on a market area basis, instead of site-by-site, and mutually exclusive applications will be resolved through competitive bidding procedures. As noted, a FRFA was incorporated into the *800 MHz Second Report and Order*. In that analysis, we described the small entities that might be significantly affected at that time by the rules adopted in the *800 MHz Second Report and Order*. Those entities include existing 800 MHz SMR operators and new entrants into the 800 MHz SMR market. To ensure the more meaningful participation of small business entities in the auction for geographic area 800 MHz SMR licenses, the Commission, adopted a two-tiered definition of small businesses in the *800 MHz Second Report and Order*. A very small business will be defined as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business will be defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Small Business Administration (SBA) has approved these definitions for the lower 80 SMR channels and General Category channels.[29]

13. Based on the revised channelization plan adopted in the *Memorandum Opinion and Order on Reconsideration*, the Commission anticipates that a total of 3,850 EA licenses will be auctioned in the lower 230 channels of the 800 MHz SMR service. This figured is derived by multiplying the total number of EAs (175)[30] by the number of channel blocks (22) in the lower 230 channels.[31] No party

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[24] 5 U.S.C. § 601(4).

[25] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[26] 5 U.S.C. § 601(5).

[27] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[28] Id.

[29] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 10, 1999).

[30] The Department of Commerce Bureau of Economic Analysis has established 172 EAs which cover the continental United States. *See* "Final Redefinition of the BEA Economic Areas, 60 Fed. Reg. 31,114 (March 10, 1995). The Commission has established three additional EA licensing regions for the five U.S. possessions.

submitting or commenting on the petitions for reconsideration giving rise to this *Memorandum Opinion and Order on Reconsideration* commented on the potential number of small entities that might participate in the auction of the lower 230 channels and no reasonable estimate can be made.

14. The Commission does not know how many 800 MHz SMR service providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In the auction of the upper 200 channels of the 800 MHz SMR service, there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small businesses. There is no basis to determine, of the 3,850 geographic area licenses to be auctioned in the lower 230 channels, the number of licenses that will be awarded to small or very small businesses.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:

15. With one exception, this *Memorandum Opinion and Order on Reconsideration* does not impose any additional recordkeeping or other compliance requirements beyond the requirements contained in the *800 MHz Second Report and Order*. Incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent.[32]

E. Steps Taken to Minimize Any Significant Economic Burdens on Small Entities, and Significant Alternatives Considered:

16. In awarding geographic area 800 MHz licenses in the lower 230 channels, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.[33] In order to ensure the more meaningful participation of small business entities in the 800 MHz auctions, the Commission has adopted a two-tier definition of small businesses. This approach will give qualifying small businesses bidding flexibility. Small businesses will receive a 25 percent bidding credit and very small businesses will receive a 35 percent bidding credit.[34]

17. A number of petitioners requested that we reconsider our decision to license the 150 General Category channels in three contiguous 50-channel blocks. These petitioners generally supported the licensing of smaller channel blocks as a means of enabling small businesses and new entrants to

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[31] The lower 80 channels were divided into 16 blocks of 5 channels each and the General Category channels were divided into 6 blocks of 25 channels each. This results in 22 channels blocks available for auction in each of the 175 EAs.

[32] *Memorandum Opinion and Order on Reconsideration* at Section IV.B.1.b.

[33] 47 U.S.C. § 309(j)(3)(B).

[34] *See 800 MHz Second Report and Order*, 12 FCC Rcd at 19170 ¶ 277.

acquire spectrum in the 800 MHz SMR service. Recognizing these concerns, we have determined that the General Category channels will be licensed in six contiguous 25-channel blocks, rather than three contiguous 50-channel blocks.[35] A significant portion of incumbent licensees on the General Category frequencies are small businesses and are licensed for only a few channels in the band. Auctioning licenses for General Category Channels in smaller channels blocks will provide these small business incumbents with greater opportunities to take advantage of geographic area licensing. In addition, it will encourage new entrant participation in the provision of 800 MHz services. Changing the block size from 50 channels to 25 channels will provide small entities with the opportunity to acquire smaller amounts of spectrum consistent with their financial means and technological needs. By further facilitating small business and new entrant participation in the provision of 800 MHz services, this channel plan fulfills our statutory mandate of promoting economic opportunity for a wide variety of applicants and avoiding an excessive concentration of licenses.[36] At the same time, licensing in 25-channel blocks will allow entities desiring large contiguous blocks of spectrum to pursue such spectrum in the General Category.

18. In concluding that licensing the General Category channels in blocks of 25 strikes a better balance between the competing needs of different licensees, we also rejected one petitioner's proposal to license channels on an individual basis. We do not believe the public interest would be served by licensing on a channel-by-channel basis, because this method of licensing would be administratively burdensome given the large number of channels involved. Single channel licensing would also be inconsistent with the needs of applicants that require blocks of contiguous spectrum and would not foster the kind of technological advancements that would allow SMR licensees, which typically operate multichannel systems, to compete with other CMRS licensees.

19. In the *800 MHZ Second Report and Order*, we adopted construction requirements for the lower 230 channels that required EA licensees to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population within five years of license grant.[37] However, as an alternative to those construction requirements, we stated that EA licensees in the lower 230 channels could provide "substantial service" to their geographic license area within five years of license grant. One petitioner asked the Commission to eliminate the substantial service test and require that construction standards be met on a "per channel" basis. We have rejected the petitioner's request because we believe that maintaining the substantial service option as an alternative to meeting applicable construction requirements will facilitate build-out in rural areas, encourage licensees to provide new service, and enable new entrants to satisfy our coverage requirements in geographic areas where incumbents are already substantially built out.[38] We believe that rural service providers as well as new entrants are likely to include small businesses, and thus retaining the "substantial service" option should benefit small businesses. Giving licensees flexibility to satisfy the "substantial service" option in different ways should benefit small businesses.

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[35] *Memorandum Opinion and Order on Reconsideration* at Section IV.A.1.

[36] *See* 47 U.S.C. § 309(j)(4)(C) and § 309(j)(3)(B).

[37] *See 800 MHz Second Report and Order*, 12 FCC Rcd at 19094, ¶ 34.

[38] *Memorandum Opinion and Order on Reconsideration* at Section IV.A.2.

20. In the *Second Report and Order*, we concluded that incumbent licensees may add or modify sites within their existing 22 dBμ interference contours without prior Commission approval, and may use their 18 dBμ interference contour as the basis for modifying or expanding their systems provided that they obtain the consent of all co-channel incumbents potentially affected by the use of this standard. Three petitioners suggested that we clarify that an incumbent licensee on the lower 230 channels seeking to modify its system using its 18 dBμ interference contour may, in the absence of consent from affected incumbents, provide a statement from a certified frequency advisory committee that a modification will not cause interference to adjacent licensees. In response to this request we have clarified that incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator an engineering study showing that interference will not occur together with proof that the incumbent licensee has sought consent.[39] Adopting this alternative will provide a balance between incumbent licensee flexibility and incumbent licensee protection, including small business incumbent licensees. This alternative reduces unnecessary regulatory burdens on licensees and administrative costs on the industry, and thereby benefits consumers.

21. Two petitioners contended that incumbents' geographic licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of our interference rules. We considered and rejected this proposal, finding that inclusion of areas outside of an incumbent's interference contours would be contrary to our objective of prohibiting encroachment on the geographic area licensee's operations. Incumbents seeking to expand their contours, including small businesses, may participate in the auction of geographic area licenses or seek partitioning agreements with geographic area licensees.

22. A number of petitioners have requested that we reconsider our decision to grant mutually exclusive applications for geographic area licenses in the lower 230 channels through competitive bidding. Balancing various interests, we have affirmed the use of competitive bidding to grant mutually exclusive 800 MHz SMR licenses. We also reaffirm our conclusion in the *800 MHz Second Report and Order* that mutually exclusive applications for the lower 230 channels are auctionable under the Commission's auction authority, as amended by the Balanced Budget Act of 1997.[40] Under the Commission's rules, incumbent licensees and potential new providers of this service, including small businesses, will be able to participate in the auction process because we have decided not to restrict eligibility for EA licenses.

23. Some petitioners contend that the administrative procedures associated with assigning geographic area licenses through auctions are not as efficient as site-specific licensing. We disagree with those petitioners and reiterate the advantages to both the Commission and licensees of geographic area licensing. We again emphasize that geographic area licensing offers a flexible licensing scheme that eliminates the need for many of the complicated and burdensome licensing procedures that hampered SMR development in the past. Small businesses will be among those licensees that will benefit from the advantages of a flexible and less burdensome licensing scheme.

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[39] *Memorandum Opinion and Order on Reconsideration* at Section IV.B.1.b.

[40] *Memorandum Opinion and Order on Reconsideration* at Section IV.E.1.

24. Several petitioners asked the Commission to limit participation in the 800 MHz SMR auction to SMR and/or non-SMR incumbents. The Commission specifically considered and rejected a proposal to limit eligibility for geographic area licenses to incumbents providing coverage to 70 percent or more of their market areas. In rejecting these proposals, we concluded that market forces, not regulation, should determine participation in competitive bidding for geographic area licenses. We concluded that the competitive bidding process will adequately deter speculation and that open eligibility will foster competition and result in a diverse group of 800 MHz SMR providers, including small businesses.[41]

25. In the *800 MHz Second Report and Order*, we stated that to expedite the auctioning of EA licenses for the lower 230 channels, we would auction these licenses using the five regional groups that were used for the regional narrowband Personal Communications Services (PCS) auction. On reconsideration, we clarify the method by which we will group licenses for auction. While we continue to believe that licenses should be grouped for competitive bidding purposes in a manner that will reduce the administrative burden on auction participants, particularly small businesses, we will not use the five regional groups based on Basic Trading Areas that were used in the regional narrowband PCS auction. Instead, we direct the Bureau to seek comment on license groupings and determine, pursuant to its delegated authority, what groups, if any, should be established for auctioning the lower 80 and General Category EA licenses.

26. The Commission declined to reconsider its decision in the *Part 1 Third Report and Order*[42] to suspend the availability of installment payment financing for small businesses participating in the auction of the lower 230 channels of the 800 MHz SMR service.[43] To balance the impact of this decision on small businesses, in the *800 MHz Second Report and Order*,[44] the Commission established larger bidding credits for qualifying entities. We believe that the larger bidding credit will provide small businesses with adequate opportunities to participate in the 800 MHz SMR auction.

27. We have also rejected one petitioner's contention that the Commission is required to incorporate gender- and minority-based provisions into its competitive bidding procedures. Recent U.S. Supreme Court decisions have created legal uncertainty on whether special auction provisions for minorities and women could withstand a constitutional challenge. The designated entity bidding credits adopted for the 800 MHz service are gender- and minority-neutral but specifically target small businesses.[45] Auction results indicate that many of the small businesses participating in auctions are

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[41] *Memorandum Opinion and Order on Reconsideration* at Section IV.E.2.

[42] *See Part 1 Third Report and Order*, 13 FCC Rcd 374, 399-402, ¶¶ 38-40 (1997).

[43] *Memorandum Opinion and Order on Reconsideration* at Section IV.E.4.a.

[44] *800 MHz Second Report and Order*, 12 FCC Rcd at 19170, ¶ 277.

[45] *800 MHz Second Report and Order*, 12 FCC Rcd at 19167-19168, ¶ 271.

also women- and minority-owned, therefore effectively furthering Congress' objective of disseminating licenses among a wide variety of applicants.[46]

F. Report to Congress

28. The Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[47] In addition, the Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Memorandum Opinion and Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.[48]

[46] *See* FCC Report to Congress on Spectrum Auctions,WT Docket No. 97-150, *Report,* FCC 97-353 (rel. October 9, 1997) at 28.

[47] *See* 5 U.S.C. § 801(a)(1)(A).

[48] *See* 5 U.S.C. § 604(b).