

telecommunications carriers as eligible telecommunications carriers under section 214(e) of the Act³⁴² for the purposes of receiving universal service support under section 254(e).³⁴³ Our objective is to fulfill section 254's mandate that "all regions of the Nation . . . have access to telecommunications" with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.³⁴⁴

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

157. We received no comments directly in response to the IRFA in this proceeding. Some comments generally addressed small business issues, but these issues are not a part of this present Order.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

158. 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 the new rules.³⁴⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁴⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁴⁷ A small business concern is one that: (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).³⁴⁸ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³⁴⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.³⁵⁰ And finally, "small governmental jurisdiction" generally means "governments of cities,

³⁴² 47 U.S.C. § 214(e).

³⁴³ 47 U.S.C. § 254(e).

³⁴⁴ See Section III.C.2., *supra*.

³⁴⁵ 5 U.S.C. § 603(b)(3).

³⁴⁶ 5 U.S.C. § 601(6).

³⁴⁷ 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).

³⁴⁸ Small Business Act, 15 U.S.C. § 632.

³⁴⁹ 5 U.S.C. § 601(4).

³⁵⁰ 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).

counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”³⁵¹ As of 1992, there were approximately 85,006 such jurisdictions in the United States.³⁵² This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.³⁵³ 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. In this Order, the Commission stated that the new rules will affect all providers of interstate telecommunications and interstate telecommunications services. Below, we further describe and estimate the number of small business concerns that may be affected by the rules adopted in this Order.

159. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.³⁵⁴ We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

160. The most reliable source of information regarding the total numbers of common carriers and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).³⁵⁵ According to data in the most recent report, there are 4,144 interstate carriers.³⁵⁶ These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

161. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³⁵⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not

³⁵¹ 5 U.S.C. § 601(5).

³⁵² U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

³⁵³ *Id.*

³⁵⁴ 13 C.F.R. § 121.201.

³⁵⁵ FCC, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 2000) (*Carrier Locator*). See also 47 C.F.R. § 64.601 *et seq.* (TRS).

³⁵⁶ *Carrier Locator* at Fig. 1.

³⁵⁷ 5 U.S.C. § 601(3).

“national” in scope.³⁵⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

162. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁵⁹ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not “independently owned and operated.”³⁶⁰ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules in this Order.

163. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁶¹ According to SBA’s definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.³⁶² All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA’s definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in this Order.

³⁵⁸ Letter from Jere W. Glover, SBA, to Chmn. William E. Kennard, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

³⁵⁹ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (“1992 Census”).

³⁶⁰ 15 U.S.C. § 632(a)(1).

³⁶¹ 1992 Census, *supra*, at Firm Size 1-123.

³⁶² 13 C.F.R. § 121.201, SIC Code 4813.

164. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.³⁶³ The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).³⁶⁴ According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers.³⁶⁵ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the decisions and rule changes adopted in this Order.

165. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.³⁶⁶ According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.³⁶⁷ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in this Order.

166. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules – which,

³⁶³ 13 C.F.R. § 121.210, SIC Code 4813.

³⁶⁴ See 47 C.F.R. § 64.601 *et seq.*; *Carrier Locator* at Fig. 1.

³⁶⁵ *Carrier Locator* at Fig. 1. The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

³⁶⁶ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995)* (“1992 Census”).

³⁶⁷ 13 C.F.R. § 121.201, SIC Code 4812.

for both categories, is for telephone companies other than radiotelephone (wireless) companies.³⁶⁸ To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.³⁶⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rules adopted in this Order.

167. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³⁷⁰ For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³⁷¹ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.³⁷² No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

168. *SMR Licensees.* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,³⁷³ and

³⁶⁸ *Id.*

³⁶⁹ *Carrier Locator* at Fig. 1.

³⁷⁰ *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

³⁷¹ *Id.*, at para. 60.

³⁷² *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

³⁷³ *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR* (continued....)

approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Order.

169. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in this Order.

170. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.³⁷⁴ According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.³⁷⁵ Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

171. *220 MHz Radio Service – Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁷⁶ We have defined a small
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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 Rulemaking, 11 FCC Rcd 1463 (1995).

³⁷⁴ 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

³⁷⁵ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

³⁷⁶ 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997). The SBA has approved these definitions. See Letter from A. Alvarez, SBA, to D. Phythyon, FCC (Jan. 6, 1998).

business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³⁷⁷ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.³⁷⁸ 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.³⁷⁹ A re-auction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.³⁸⁰ As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

172. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

173. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.³⁸¹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).³⁸² We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.³⁸³ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

³⁷⁷ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

³⁷⁸ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

³⁷⁹ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

³⁸⁰ Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC-99-24-E, DA No. 99-1287 (Wireless Telecom. Bur. July 1, 1999).

³⁸¹ The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

³⁸² BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

³⁸³ 13 C.F.R. § 121.201, SIC Code 4812.

174. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.³⁸⁴ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.³⁸⁵ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

175. *Fixed Microwave Services.* Microwave services include common carrier,³⁸⁶ private-operational fixed,³⁸⁷ and broadcast auxiliary radio services.³⁸⁸ At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.³⁸⁹ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

176. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules in this Order includes these eight entities.

177. *Multipoint Distribution Systems (MDS).* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.³⁹⁰ This definition of a small entity

³⁸⁴ The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

³⁸⁵ 13 C.F.R. § 121.201, SIC Code 4812.

³⁸⁶ 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's rules).

³⁸⁷ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

³⁸⁸ Auxiliary Microwave Service is governed by Part 74 of the Commission's rules. *See* 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

³⁸⁹ 13 C.F.R. § 121.201, SIC Code 4812.

³⁹⁰ 47 C.F.R. § 21.961(b)(1).

in the context of MDS auctions has been approved by the SBA.³⁹¹ The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.³⁹²

178. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.³⁹³ This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules in this Order.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

179. In this Order, we adopt revisions to Part 54 that enhance universal service support for low-income individuals living on tribal lands, that remove certain administrative burdens that have prevented carriers not subject to state rate regulation, such as many tribal carriers, from providing certain tiers of Lifeline service to qualifying low-income consumers, and that clarify how the Commission will proceed under section 214(e) of the Act in the designation of eligible telecommunications carriers.

180. With respect to our rules enhancing Lifeline and Link-Up assistance on tribal lands, carriers will be required to ascertain applicant eligibility for these forms of low-income universal service support. Ascertainment of applicant eligibility will entail determining whether a particular applicant is (1) a low-income applicant, under the criteria for income eligibility set forth above,³⁹⁴ and (2) living on or near a reservation. This Order also clarifies and elaborates on carrier obligations to publicize the availability of Lifeline and Link-Up assistance, although no new carrier obligations are imposed. Furthermore, this Order changes the requirements placed upon carriers for the provision of second-tier and third-tier Lifeline support. A carrier not subject to state rate regulation may now obtain second-tier Lifeline support provided it certifies to the Administrator that it will pass through the full amount of any second-tier support it receives to qualifying low income subscribers, and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction. Such a carrier also may now obtain third-tier Lifeline support provided that the carrier or a tribe provides the local matching funds necessary to receive third-tier federal Lifeline support. Finally, because carriers are required to make low-income assistance available to qualifying customers, the rules and decisions in this Order

³⁹¹ See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

³⁹² One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

³⁹³ 13 C.F.R. § 121.201.

³⁹⁴ See Section III.D.2.d., *supra*.

expanding the level and types of support available to any carrier's customers will require that carrier to make such expanded support available to its qualifying customers.

181. Our clarification of how the Commission will proceed under section 214(e) of the Act in the designation of eligible telecommunications carriers will impose no additional reporting, recordkeeping, or other compliance requirements on carriers seeking eligible telecommunications carrier designation for the provision of service on tribal lands, but instead should diminish some carriers' legal costs by setting forth guidelines for carriers seeking such designation from the Commission. A state government, however, seeking to preserve a claim of its jurisdiction over any carrier seeking such designation from the Commission, will have to indicate to the Commission its jurisdictional claim in order for the Commission to refrain from entertaining such a designation proceeding until the state makes a final determination on its jurisdiction over that carrier.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

182. With respect to our rules enhancing Lifeline and LinkUp assistance on tribal lands, we emphasize that most of the information carriers will be required to examine in order to determine applicant eligibility are already collected pursuant to other federal programs for Indians and for low-income individuals, and are readily available. For example, BIA maintains and regularly publishes in the Federal Register lists of those areas in the Nation which fall under BIA's definition of "reservation" or are considered "near reservation." Moreover, carriers are already required to determine applicants' income eligibility under the existing Lifeline and LinkUp support mechanisms; this Order modifies those eligibility criteria merely by providing certain additional means-tested programs that low-income individuals living on tribal lands may use to establish their income eligibility. In order to apply these new eligibility criteria, carriers will not be required to make *de novo* evaluations of subscriber eligibility. Rather, carriers will only need to consult the decisions regarding particular applicants' low-income status already made by other government entities. Thus, the inquiry carriers will have to make to determine whether an applicant for the low-income support adopted in this Order meets the income eligibility requirement should not be substantially different from the inquiry carriers must already make for the Commission's existing low-income support mechanisms. Furthermore, our clarification of carrier obligations to publicize the availability of Lifeline and Link-Up assistance does not expand existing obligations or create additional ones; rather, this Order clarifies existing obligations under section 214(e) of the Act and our previous Orders.³⁹⁵ Additionally, the certifications required by our new rules for second and third tier Lifeline support impose at most a minimal burden on carriers seeking to obtain such support. Finally, to the extent the rules and decisions adopted in this Order require carriers to change their operations in order to deliver expanded support to qualifying customers, for example by changing their billing systems, we have some indication that the costs of making such modifications, if any, are minimal.³⁹⁶ Furthermore, to the extent the rules and decisions adopted in this Order entail any such costs, they also provide substantial financial benefits, by providing carriers with guaranteed revenue streams in place of billings subject to the risks of non-collection. We conclude that, in general, the compliance requirements entailed by the low-income support mechanisms adopted in this Order are not

³⁹⁵ See, e.g., *Universal Service Order*, 12 FCC Rcd at 8993, para. 407.

³⁹⁶ See, e.g., Letter from David Cosson, Kraskin, Lesse & Cosson, LLP to Irene Flannery, FCC, dated May 15, 2000 (citing indication by company that designs billing software for 60 rural telephone companies that billing could be "readily" modified to account for expanded Lifeline support for tribal communities).

of a scope or magnitude substantially different from the compliance requirements entailed by our existing low-income support mechanisms.

183. With respect to our clarification of how the Commission will proceed under section 214(e) of the Act in the designation of eligible telecommunications carriers we conclude that the cost to a state government of filing with the Commission a statement asserting jurisdiction over any carrier seeking such designation for the provision of service to tribal lands, in order for the Commission to refrain from acting on the designation petition until the state makes a final determination regarding its jurisdiction over that carrier, will be minimal. Furthermore, because such filings would be made by the authorized state government body, rather than a local governing authority, it is doubtful that any government authority making such a filing with the Commission would be considered a small entity.³⁹⁷

6. Report to Congress.

184. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

C. Effective Date of Final Rules

185. Pursuant to 5 U.S.C. § 553(d),³⁹⁸ the rules and rule changes adopted herein shall take effect thirty (30) days after their publication in the Federal Register.

D. Initial Regulatory Flexibility Analysis

186. As required by the Regulatory Flexibility Act (RFA),³⁹⁹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided below in section VI.E. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴⁰⁰ In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁴⁰¹

³⁹⁷ *See supra*, at para. 158 (defining “small governmental jurisdiction”).

³⁹⁸ *See* 5 U.S.C. § 553(d).

³⁹⁹ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended 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).

⁴⁰⁰ *See* 5 U.S.C. § 603(a).

⁴⁰¹ *See id.*

1. Need for and Objectives of the Proposed Rules

187. The Commission issues the Further Notice of Proposed Rulemaking contained herein as a part of its implementation of the Act's mandate that "[c]onsumers in all regions of the Nation . . . have access to telecommunications and information services . . .".⁴⁰² The Further Notice seeks comment on rules setting a deadline for the consideration of petitions for designation of carriers as eligible telecommunications carriers under section 214(e) of the Act⁴⁰³ for the purposes of receiving universal service support under section 254(e).⁴⁰⁴ The Further Notice also seeks comment on alternative methods for facilitating expeditious resolution of eligibility designation requests. Our objective is to fulfill section 254's mandate that "all regions of the Nation . . . have access to telecommunications" with respect to tribal lands, which have the lowest reported subscribership levels for telecommunications in the Nation.⁴⁰⁵

2. Legal Basis

188. The legal basis as proposed for this Further Notice is contained in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 254.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

189. 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 the proposed rules.⁴⁰⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴⁰⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴⁰⁸ A small business concern is one that: (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).⁴⁰⁹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and

⁴⁰² 47 U.S.C. § 254.

⁴⁰³ 47 U.S.C. § 214(e).

⁴⁰⁴ 47 U.S.C. § 254(e).

⁴⁰⁵ See Section III.C.2., *supra*.

⁴⁰⁶ 5 U.S.C. § 603(b)(3).

⁴⁰⁷ 5 U.S.C. § 601(6).

⁴⁰⁸ 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).

⁴⁰⁹ Small Business Act, 15 U.S.C. § 632.

is not dominant in its field.”⁴¹⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁴¹¹ And finally, “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.”⁴¹² As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁴¹³ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.⁴¹⁴ 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. The new rules proposed in this Further Notice may affect all providers of interstate telecommunications and interstate telecommunications services. Below, we further describe and estimate the number of small business concerns that may be affected by the rules proposed in this Further Notice.

190. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.⁴¹⁵ We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

191. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).⁴¹⁶ According to data in the most recent report, there are 4,144 interstate carriers.⁴¹⁷ These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

192. We have included small incumbent LECs in this present RFA analysis. As noted above,

⁴¹⁰ 5 U.S.C. § 601(4).

⁴¹¹ 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).

⁴¹² 5 U.S.C. § 601(5).

⁴¹³ U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

⁴¹⁴ *Id.*

⁴¹⁵ 13 C.F.R. § 121.201.

⁴¹⁶ FCC, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 2000) (*Carrier Locator*). See also 47 C.F.R. § 64.601 *et seq.* (TRS).

⁴¹⁷ *Carrier Locator* at Fig. 1.

a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁴¹⁸ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁴¹⁹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

193. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁴²⁰ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁴²¹ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the rules proposed in this Further Notice.

194. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁴²² According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁴²³ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs.

⁴¹⁸ 5 U.S.C. § 601(3).

⁴¹⁹ Letter from Jere W. Glover, SBA, to Chmn. William E. Kennard, FCC, dated May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

⁴²⁰ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

⁴²¹ 15 U.S.C. § 632(a)(1).

⁴²² 1992 Census, *supra*, at Firm Size 1-123.

⁴²³ 13 C.F.R. § 121.201, SIC Code 4813.

Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the rules proposed in this Further Notice.

195. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴²⁴ The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).⁴²⁵ According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers.⁴²⁶ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the rules proposed in this Further Notice.

196. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.⁴²⁷ According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.⁴²⁸ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the rules proposed in this Further Notice.

197. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine

⁴²⁴ 13 C.F.R. § 121.210, SIC Code 4813.

⁴²⁵ See 47 C.F.R. § 64.601 *et seq.*; *Carrier Locator* at Fig. 1.

⁴²⁶ *Carrier Locator* at Fig. 1. The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

⁴²⁷ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

⁴²⁸ 13 C.F.R. § 121.201, SIC Code 4812.

our calculation of the number of radiotelephone companies that may be affected by the rules proposed herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules – which, for both categories, is for telephone companies other than radiotelephone (wireless) companies.⁴²⁹ To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.⁴³⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the rules proposed in this Further Notice.

198. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁴³¹ For Block F, an additional classification for “very small business” was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁴³² These regulations defining “small entity” in the context of broadband PCS auctions have been approved by SBA.⁴³³ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

199. *SMR Licensees.* Pursuant to section 90.814(b)(1) of the Commission's rules, 47 C.F.R. § 90.814(b)(1), the Commission has defined “small entity” in auctions for geographic area 800 MHz and

⁴²⁹ *Id.*

⁴³⁰ *Carrier Locator* at Fig. 1.

⁴³¹ See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

⁴³² *Id.*, at para. 60.

⁴³³ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a “small entity” in the context of 800 MHz SMR has been approved by the SBA,⁴³⁴ and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in this Order.

200. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the rules proposed in this Further Notice.

201. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.⁴³⁵ According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁴³⁶ Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA’s definition.

⁴³⁴ See *Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *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 Rulemaking, 11 FCC Rcd 1463 (1995).

⁴³⁵ 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

⁴³⁶ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

202. *220 MHz Radio Service – Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴³⁷ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁴³⁸ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁴³⁹ 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.⁴⁴⁰ A re-auction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.⁴⁴¹ As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

203. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

204. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁴⁴² A significant subset of the Rural Radiotelephone

⁴³⁷ 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291-295 (1997). The SBA has approved these definitions. See Letter from A. Alvarez, SBA, to D. Phythyon, FCC (Jan. 6, 1998).

⁴³⁸ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

⁴³⁹ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

⁴⁴⁰ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After final Payment is Made." Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

⁴⁴¹ Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC-99-24-E, DA No. 99-1287 (Wireless Telecom. Bur. July 1, 1999).

⁴⁴² The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

Service is the Basic Exchange Telephone Radio Systems (BETRS).⁴⁴³ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁴⁴ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

205. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁴⁴⁵ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁴⁶ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

206. *Fixed Microwave Services.* Microwave services include common carrier,⁴⁴⁷ private-operational fixed,⁴⁴⁸ and broadcast auxiliary radio services.⁴⁴⁹ At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.⁴⁵⁰ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

207. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very

⁴⁴³ BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

⁴⁴⁴ 13 C.F.R. § 121.201, SIC Code 4812.

⁴⁴⁵ The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

⁴⁴⁶ 13 C.F.R. § 121.201, SIC Code 4812.

⁴⁴⁷ 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's rules).

⁴⁴⁸ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁴⁴⁹ Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. *See* 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁴⁵⁰ 13 C.F.R. § 121.201, SIC Code 4812.

small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the rules proposed in this Further Notice includes these eight entities.

208. *Multipoint Distribution Systems (MDS)*. The Commission has defined “small entity” for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.⁴⁵¹ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴⁵² The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.⁴⁵³

209. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.⁴⁵⁴ This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission’s auction rules, some which may be affected by the rules proposed in this Further Notice.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

210. Currently, there is no deadline for the consideration of petitions for designation of carriers as eligible telecommunications carriers under section 214(e) of the Act⁴⁵⁵ for the purposes of receiving universal service support under section 254(e).⁴⁵⁶ Under the rules proposed in the Further Notice, state commissions and the Commission would each have a set time frame within which to consider such petitions before them.

⁴⁵¹ 47 C.F.R. § 21.961(b)(1).

⁴⁵² See *Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

⁴⁵³ One of these small entities, O’ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

⁴⁵⁴ 13 C.F.R. § 121.201.

⁴⁵⁵ 47 U.S.C. § 214(e).

⁴⁵⁶ 47 U.S.C. § 254(e).

5. **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

211. Wherever possible, the Further Notice proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. Finally, the Further Notice seeks comment on measures to avoid significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

6. **Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.**

212. None.

E. **Comment Dates and Filing Procedures**

213. We invite comment on the issues and questions set forth in the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,⁴⁵⁷ interested parties may file comments as follows: comments are due **August 7, 2000**, and reply comments are due **August 28, 2000**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

214. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

215. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554.

216. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be

⁴⁵⁷ 47 C.F.R. §§ 1.415, 1.419.

submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96-45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

VII. ORDERING CLAUSES

217. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403, this REPORT AND ORDER, MEMORANDUM OPINION AND ORDER, AND FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

218. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A attached hereto, effective thirty (30) days after the publication of this REPORT AND ORDER, MEMORANDUM OPINION AND ORDER, AND FURTHER NOTICE OF PROPOSED RULEMAKING in the Federal Register.

219. IT IS FURTHER ORDERED that Cellco's Petition for Designation as an Eligible Telecommunications Carrier IS DISMISSED WITHOUT PREJUDICE to the extent that it seeks designation for service in Maryland.

220. IT IS FURTHER ORDERED that Smith Bagley's Petition for Designation as an Eligible Telecommunications Carrier is DISMISSED WITHOUT PREJUDICE.

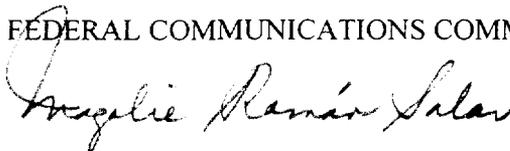
221. IT IS FURTHER ORDERED that the record in Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier on the Crow Reservation SHALL BE REOPENED, as discussed herein.

222. IT IS FURTHER ORDERED that Cheyenne River Sioux Tribe Telephone Authority's Petition for Designation as an Eligible Telecommunications Carrier is DISMISSED WITHOUT PREJUDICE.

223. IT IS FURTHER ORDERED that AUTHORITY IS DELEGATED to the CHIEF OF THE COMMON CARRIER BUREAU pursuant to section 0.291 of the Commission rules, 47 C.F.R. § 0.291, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Order.

224. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

**APPENDIX A
FINAL RULES**

1. Section 54.400 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(a) Qualifying low-income consumer. A “qualifying low-income consumer” is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.

* * * * *

(e) Eligible resident of Tribal lands. An “eligible resident of Tribal lands” is a “qualifying low-income consumer,” as defined in paragraph (a) of this section, living on or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v).

2. Section 54.401 is amended by revising paragraph (d) to read as follows:

§ 54.401 Lifeline defined.

* * * * *

(d) The state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier’s Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Eligible telecommunications carriers not subject to state commission jurisdiction also shall make such a filing with the Administrator. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier’s Lifeline plan satisfies the criteria set out in this subpart.

3. Section 54.403 is amended by revising paragraphs (a)(2) and (a)(3), adding a new paragraph (a)(4), and revising paragraph (b) to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

* * * * *

(2) Tier Two. Additional federal Lifeline support in the amount of \$1.75 per month will be made available to the eligible telecommunications carrier providing Lifeline service to the qualifying low-income consumer, if that carrier certifies to the Administrator that it will pass through the full amount of Tier-Two support to its qualifying, low-income consumers and that it has received any non-federal

regulatory approvals necessary to implement the required rate reduction.

(3) *Tier Three.* Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month in federal support, will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the carrier certifies to the Administrator that it will pass through the full amount of Tier-Three support to its qualifying low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(4) *Tier Four.* Additional federal Lifeline support of up to \$25 per month will be made available to a eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), to the extent that:

(i) This amount does not bring the basic local residential rate (including any mileage, zonal, or other non-discretionary charges associated with basic residential service) below \$1 per month per qualifying low-income subscribers; and

(ii) The eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tier-Four amount to qualifying eligible residents of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) For a qualifying low-income consumer who is not an eligible resident of Tribal lands, as defined in § 54.400(e), the federal Lifeline support amount shall not exceed \$3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or § 69.152(d) and (q) of this chapter, whichever is applicable. For an eligible resident of Tribal lands, the federal Lifeline support amount shall not exceed \$28.50 plus that same End User Common Line charge. Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

4. Section 54.405 is revised to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers shall:

(a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers, and

(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

5. Section 54.409 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service in a state that mandates state Lifeline support, a consumer must meet the eligibility criteria established by the state commission for such support. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income. A state containing geographic areas included in the definition of “reservation” and “near reservation,” as defined in 25 CFR 20.1(r) and 20.1(v), must ensure that its qualification criteria are reasonably designed to apply to low-income individuals living in such areas.

(b) To qualify to receive Lifeline service in a state that does not mandate state Lifeline support, a consumer must participate in one of the following federal assistance programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; and Low-Income Home Energy Assistance Program. In a state that does not mandate state Lifeline support, each eligible telecommunications carrier providing Lifeline service to a qualifying, low-income consumer must obtain that consumer’s signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs listed in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

(c) Notwithstanding paragraphs (a) and (b) of this section, an individual living on a reservation or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v), shall qualify to receive Tiers One, Two, and Four Lifeline service if the individual participates in one of the following federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those meeting its income qualifying standard); or National School Lunch Program’s free lunch program. Such qualifying low-income consumer shall also qualify for Tier-Three Lifeline support, if the carrier offering the Lifeline service is not subject to the regulation of the state and provides carrier-matching funds, as described in § 54.403(a)(3). To receive Lifeline support under this paragraph for the eligible resident of Tribal lands, the eligible telecommunications carrier offering the Lifeline service to such consumer must obtain the consumer’s signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the programs mentioned in this paragraph or paragraph (b) of this section, and lives on or near a reservation, as defined in 25 CFR 20.1(r) and 20.1(v). In addition to identifying in that document the program or programs from which that consumer receives benefits, an eligible resident of Tribal lands also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

6. Section 54.411 is amended by adding new paragraphs (a)(3) and (d) and revising paragraph (b) to read as follows:

§ 54.411 Link Up program defined.

(a) * * * * *

(3) For an eligible resident of Tribal lands, a reduction of up to \$70, in addition to the reduction in paragraph (a)(1) of this section, to cover 100 percent of the charges between \$60 and \$130 assessed for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands. For purposes of this paragraph, charges assessed for commencing telecommunications services shall include any charges that the carrier customarily assesses to connect subscribers to the network, including facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service. The reduction shall not apply to charges assessed for facilities or equipment that fall on the customer side of demarcation point, as defined in § 68.3 of this chapter.

(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraphs (a)(1) and (a)(2) of this section. An eligible resident of Tribal lands may participate in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *

(d) An eligible telecommunications carrier shall publicize the availability of Link Up support in a manner reasonably designed to reach those likely to qualify for the support.

7. Section 54.415 is revised to read as follows:

§ 54.415 Consumer qualification for Link Up.

(a) In a state that mandates state Lifeline support, the consumer qualification criteria for Link Up shall be the same as the criteria that the state established for Lifeline qualification in accord with § 54.409(a).

(b) In a state that does not mandate state Lifeline support, the consumer qualification criteria for Link Up shall be the criteria set forth in § 54.409(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, an eligible resident of Tribal lands, as defined in § 54.400(e), shall qualify to receive Link Up support.

8. Section 54.417 is removed.

**APPENDIX B
PARTIES FILING INITIAL COMMENTS**

<u>Commenter</u>	<u>Abbreviation</u>
Air Touch Communications and Globalstar USA, Inc.	Air Touch
Arizona Telemedicine Program	ATP
Alaska Rural Coalition	Alaska Coalition
Alaska, Regulatory Commission of	RCA
Alaska, State of	Alaska
AMSC Subsidiary Corporation	AMSC
American Samoa Telecommunications Authority	ASTCA
AT&T Corp.	AT&T
Bell Atlantic Mobile, Inc.	BAM
Cellular Telecommunications Industry Association	CTIA
CenturyTel, Inc.	CenturyTel
CCI International, N.V. (Constellation)	
Crow Tribal Council	
Department of Health and Human Services, US	
Dobson Communications Corporation	
Eastern Shoshone Tribe	
Fort Belknap Community Council	
General Communication, Inc.	GCI
Gila River Telecommunications, Inc.	GRTI
Golden West Telecommunications Cooperative, Inc. Midstate Telephone Company Mount Rushmore Telephone Company Roberts County Telephone Cooperative Association	Golden West, <i>et al.</i>

RC Communications, Inc. Sully Buttes Telephone Cooperative, Inc. Interstate Telecom Cooperative Vivian Telephone Company	
GTE Service Corporation	GTE
Guam, Government of	Guam
Hawaii, State of	
Minnesota Public Utilities Commission	MNPUC
Montana Public Service Commission	Montana PSC
Motorola, Inc., and Iridium North America	Motorola/Iridium
National Rural Telecom Association and Organization for the Promotion and Advancement of Small Telecommunications Companies	NRTA & OPASTCO
National Telephone Cooperative Association	NTCA
Northern Mariana Islands, Commonwealth of	CNMI
Palau, Republic of	
Puerto Rico Telephone Company, Inc.	PRTC
Qualcomm, Inc.	Qualcomm
Rural Utilities Service	RUS
Salt River Pima-Maricopa Indian Community and the National Tribal Telecommunications Alliance	Salt River/NTTA
SkyBridge, L.L.C.	SkyBridge
Small Business in Telecommunications	SBT
Smith Bagley, Inc.	SBI
South Dakota Independent Coalition, Inc.	SDITC
Summit Telephone and Telegraph Company of Alaska	Summit
TDS Telecommunications Corporation	TDS Telecom

Titan Wireless	Titan
Tuscarora Indian Nation	
United States Cellular Corporation	USCC
United States Telecom Association and National Exchange Carrier Association	USTA/NECA
US West Communications, Inc.	US West
United Utilities, Inc.	UUI
Virgin Islands Telephone Corporation	Vitelco
Virgin Islands, the Public Service Commission	VIPSC
Western Alliance	
Western Wireless Corp.	Western Wireless
Wisconsin, Public Service Commission of	PSCW

**APPENDIX C
PARTIES FILING REPLY COMMENTS**

<u>Commenter</u>	<u>Abbreviation</u>
Alaska, State of	
Alaska Rural Coalition	
AT&T Corp.	AT&T
Bell Atlantic Telephone Co.	Bell Atlantic
Cook Inlet Region, Inc.	CIRI
Cheyenne River Sioux Tribe Telephone Authority	
General Communications, Inc.	GCI
GTE Service Corporation	GTE
Miami Tribe of Oklahoma	Miami Tribe
Motorola, Inc.	Motorola
Northern Mariana Islands, Commonwealth of	CNMI
National Telephone Cooperative Association	NTCA
National Rural Telecom Association	NRTA
Project Telephone Company, Inc., Scobey, Montana	Project Telephone
Puerto Rico Telephone Company	PRTC
Qualcomm, Inc.	Qualcomm
Rural Utilities Service	RUS
Satellite Industry Association	SIA
Tuscarora Indian Nation	Tuscarora
United States Cellular Corporation	USCC
US West Communications, Inc.	US West
Western Wireless Corp.	Western Wireless

**SEPARATE STATEMENT OF
COMMISSIONER SUSAN NESS**

*Re: Federal-State Joint Board on Universal Service; Promoting Deployment and
Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas
(CC Docket No. 96-45); Extending Wireless Telecommunications Services to Tribal
Lands (WT Docket No. 99-266)*

I support the actions we take today to expand access to basic telephone services for a segment of the population that has one of the lowest penetration rates in the United States. In a world that is moving towards broadband communications, we must remember that many Americans still lack basic services. The steps we take today for tribal and Alaska Native lands are long overdue. I am also pleased that the Commission has taken steps to encourage the deployment of wireless services, because terrestrial and satellite wireless services may prove critical to getting basic and advanced telecommunications services to tribal lands and other remote areas. I would urge the Commission to continue its efforts to increase telephone subscribership throughout the country, particularly in rural and insular areas; when more of us are connected, all of us benefit.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, APPROVING IN PART AND DISSENTING IN PART

Re: Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas (CC Docket No. 96-45)

Like my colleagues, I wholeheartedly support the decision to begin addressing the incredibly low rates at which American Indians and Alaska Natives living on tribal lands currently subscribe to basic telephone service. Pursuant to Section 254 of the Act, we are duty-bound to promote the availability of phone service to all Americans. Even before the 1996 Act was passed, the historic universal service policies of this Commission and state commissions had yielded a remarkable rate of telephone subscribership, well above 90% for the country nationwide. And yet according to statistics obtained from the 1990 Census, subscribership among certain populations languishes: subscribership among the rural poor falls roughly 20% behind that of the nation as a whole, and American Indians living on tribal lands are only *half* as likely as other Americans to subscribe to phone service.

The Commission cannot turn a blind eye to these enormous disparities; we have an affirmative duty, at a minimum, to investigate and understand these disparities. Moreover, if these disparities result from factors that we cannot tolerate under section 254, we must take steps to reduce these disparities. That is why I support the vast majority of the measures we adopt in this *Order*. Among other things, I generally support expanding the eligibility criteria of our low income universal service programs to include income-dependent eligibility criteria employed in programs in which poor tribal members are more likely to participate. I also support requiring carriers receiving Lifeline and Link Up support to publicize the availability of such support in a manner that is likely to reach poor tribal members. In addition, I support establishing more effective procedures by which carriers not subject to state commission jurisdiction may seek designation as telecommunications carriers eligible to receive universal service support. With Indian subscribership statistics like those before us, I agree that we must do *something*.

But as a government agency, the Commission cannot do just *anything*, no matter how well-intended or politically-appealing. We must take action based on an adequate record and a thorough and logical examination of what that record does and *does not* tell us. Further, we need to balance carefully the interests of those who would benefit directly from our actions against the interests of those who would be affected indirectly. I believe it is incumbent upon me to carry out these responsibilities even when my personal sympathies would allow me to accept a weaker justification for our actions.

I regret that, given the state of the record before us now, I cannot conclude that the Commission has satisfied its responsibility to substantiate narrow portions of this decision, and thus I must regretfully dissent in part. As the *Order* correctly notes, universal service funding should be "sufficient" to satisfy the statute, but should not be more than is necessary. Yet this *Order* is hardly faithful to that principle; we have failed to show why increases in Lifeline funding are, in fact, necessary. Repeatedly, commenters noted that one central problem on tribal lands is that residents fail to avail themselves of the existing Lifeline program, thereby leaving money to which they should be eligible on the table. The reason identified is that tribal members often do not participate in the state and federal government programs that we use as proxies for low income (e.g., social security, federal housing assistance, etc.). Instead, many of these individuals subscribe to programs administered by tribal governments. It is entirely possible that establishing new and more appropriate proxies for income, which we do in this

item, will sufficiently offset the cost of service and, consequently, increase penetration, without adding new money to the program. The record simply does not offer any solid justification for actually expanding the program given this possibility.¹ To expand the program without substantiation of need contravenes the limiting principle we purport to abide by when considering expansion of funding.

As is my practice, I remain open to being persuaded that expanding funding in the manner contemplated in this decision is necessary to improve Indian subscribership. But that will require more time, explanation and credible data than could reasonably be provided at this time. Thus, with respect to these narrow aspects of this *Order*, I must respectfully and reluctantly dissent.

¹ Indeed, the *Order's* attempt to justify expansion of funding on the basis of the current record is, at best, curious. The *Order* merely points to evidence of a correlation between low income and low subscribership, without making any effort to show why this *correlation* demonstrates *causation* (i.e., that this correlation shows that inhabitants of tribal lands do not subscribe *because* they are poor). Similarly, the *Order's* reliance on efforts to increase Lifeline support in other areas to justify expanding such support to the poor on tribal lands is undermined by the central premise of our efforts to improve subscribership on these lands: that methods successful in promoting subscribership in most poor areas have not been effective in promoting subscribership in tribal areas.

SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI

Re: *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 12th Report and Order and Memorandum Opinion and Order, CC Docket No. 96-45; *Extending Wireless Telecommunications Services*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-266.

I am proud to cast my vote in support of these items. Our decisions here reflect this agency's commitment to improving access to telephone service on tribal lands and, in turn, to opening the door to the Information Age.

Section 254 of the Communications Act requires the Commission to assure that all Americans have access to telecommunications services.¹ While 94 percent of Americans enjoy phone service today, just 47 percent of Indian tribal households on tribal lands have telephones. The policies we adopt today, including expanded Lifeline and Link Up coverage, should boost subscriberhip on tribal lands and create incentives for new infrastructure investment. We appropriately recognize that wireless-based services offer unique solutions to increasing telephone access in often-isolated and remote tribal lands. I strongly support the decision to award bidding credits in upcoming auctions to wireless carriers that commit to deploy facilities and offer service to tribal areas that have telephone subscription rates below 70 percent.

I am also pleased that the Commission has established an expedited process for handling petitions by carriers seeking designations as Eligible Telecommunications Carriers on tribal lands. Excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. By committing to prompt resolution of pending petitions, we should speed deployment of telecommunications infrastructure.

Finally, I am pleased that the Commission is reaffirming its commitment to promote a government-to-government relationship with tribal nations and to recognize that tribal nations have rights to set their own communications priorities and goals. To that end, I look forward to the training session the Commission will hold this September to assist tribal nations in making decisions about telecommunications.²

¹ 47 U.S.C. § 254(b)(3).

² See "FCC Announces the Indian Telecom Training Initiative to be Held September 25-28, 2000" (rel. Apr. 24, 2000) <http://www.fcc.gov/Bureaus/Wireless/News_Releases/2000/nrw10012.doc>.

Our actions today, and our commitment to continue to act in the future, will help fulfill the mandate of Congress and, I believe, our moral obligation to ensure that all Americans enjoy the benefits of the Information Age.