Commission's rules which may occur as a result of the *Notice* would be limited to Upper 700 MHz and Lower 700 MHz Band licensees in the 698-746, 747-762, and 777-792 MHz spectrum bands, with one exception. In the *Notice*, the Commission seeks comment on the tentative conclusion that services provided in the 700 MHz Band, and in other bands subject to Part 27, should be subject to requirements concerning 911/E911 and hearing aid-compatible handsets to the extent they meet certain criteria. The *Notice* then seeks comment on how to modify Commission rules to ensure that they include all similar WRS. Thus, because such revisions potentially could affect small entity licensees holding licenses in many wireless services (and not just bands which are subject to Part 27 of the Commission's rules), this discussion includes estimates of the number of small entities in each of the categories of WRS identified below.

10. Since this rulemaking proceeding applies to multiple services, this IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this *Notice*.

Part 27 Miscellaneous Wireless Communications Services (MWCS)

11. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. 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.[10] The SBA has approved these definitions.[11] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

12. **700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[12] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[13] Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[14] SBA approval of these

[10] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

[11] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[12] *See* Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

[13] *Id.* at 5343 ¶ 108.

[14] *Id.*

definitions is not required.[15] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[16] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[17]

13. **Upper 700 MHz Band Licenses.** The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.[18] An auction for these licenses, previously scheduled for January 13, 2003, was postponed.[19]

14. **Lower 700 MHz Band Licenses.** The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[20] The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[21] 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 $15 million for the preceding three years.[22] Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which 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.[23] The SBA has approved these small size standards.[24] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[25] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses

[15] *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

[16] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

[17] *See* "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[18] Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

[19] *See* "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

[20] *See* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

[21] *Id.* at 1087-88 ¶ 172.

[22] *Id.*

[23] *Id.* at 1088 ¶ 173.

[24] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[25] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

and 476 CMA licenses.[26] Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[27]

15. **Government Transfer Bands.** The Commission adopted small business size standards for the unpaired 1390-1392 MHz, 1670-1675 MHz, and the paired 1392-1395 MHz and 1432-1435 MHz bands.[28] Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a "very small business."[29] Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses" and a bidding credit of 25 percent for "very small businesses."[30] This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules.[31] The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services.[32] The Commission noted that it had long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities.[33] The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.[34] An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

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[26] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[27] *Id.*

[28] *See* Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, AND 2385-2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) *(Government Transfer Bands Service Rules Report and Order)*.

[29] *See Service Rules Notice,* 17 FCC Rcd at 2550-51 ¶¶ 144-146. To be consistent with the size standard of "very small business" proposed for the 1427-1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding $3 million, the *Service Rules Notice* proposed to use the terms "entrepreneur" and "small business" to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively. Because the Commission is not adopting small business size standards for the 1427-1432 MHz band, it instead uses the terms "small business" and "very small business" to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively.

[30] Such bidding credits are codified for the unpaired 1390-1392 MHz, paired 1392-1395 MHz, and the paired 1432-1435 MHz bands in 47 C.F.R. § 27.807. Such bidding credits are codified for the unpaired 1670-1675 MHz band in 47 C.F.R. § 27.906.

[31] In the *Part 1 Third Report and Order*, the Commission adopted a standard schedule of bidding credits, the levels of which were developed based on its auction experience. *Part 1 Third Report and Order*, 13 FCC Rcd at 403-04 ¶ 47. *See also* 47 C.F.R. § 1.2110(f)(2).

[32] *See* Service *Rules Notice,* 17 FCC Rcd at 2550-51 ¶ 145.

[33] *See, e.g.,* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10091 ¶ 112 (1999).

[34] 47 U.S.C. § 309(j)(3)(B), (4)(C)-(D). The Commission will also not adopt special preferences for entities owned by minorities or women, and rural telephone companies. The Commission did not receive any comments on this issue, and it does not have an adequate record to support such special provisions under the current standards of judicial review. *See Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of

(continued....)

16. **Advanced Wireless Services.** In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.[35] The Commission did not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *AWS-1 Report and Order* adopts the same small business size standards that the Commission adopted for the broadband PCS service. In particular, the *AWS-1 Report and Order* defines a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

17. **Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service).** Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[36] In its recently issued *BRS/EBS Report and Order* in WT Docket No. 03-66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495-2690 MHz.[37] In connection with the 1996 MDS auction, the Commission defined "small business" 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.[38] The SBA has approved of this standard.[39] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[40] Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS

(...continued from previous page)
review for government mandated race-conscious measures); *United States v. Virginia*, 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification).

[35] Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

[36] 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. 94-131 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995) (*MDS Auction R&O*).

[37] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-145 (rel. July 29, 2004) (*BRS/EBS Report and Order*). As the Commission noted in the *Further Notice*, there are unique policies associated with ITFS licensees' educational purposes, and the services have already developed their own approach to excess capacity leasing. *See Further Notice* at ¶¶ 307-08.

[38] 47 C.F.R. § 21.961(b)(1).

[39] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[40] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O*, 10 FCC Rcd at 9608 ¶ 34.

auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[41]

18. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[42] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[43] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[44] Thus, under this size standard, the majority of firms can be considered small.

Additional Wireless Radio Services (WRS)

19. **Cellular Licensees.** The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."[45] Under that SBA category, a business is small if it has 1,500 or fewer employees.[46] For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[47] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[48] Thus, under this category and size standard, the majority of firms can be considered small.

20. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. 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, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[49] For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[50] Of this total, 1,378

[41] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $12.5 million or less). *See* 13 C.F.R. § 121.201, NAICS code 517910.

[42] 13 C.F.R. § 121.201, NAICS code 517510.

[43] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[44] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[45] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

[46] *Id.*

[47] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[48] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[49] 13 C.F.R. § 121.201, NAICS code 517212.

[50] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[51] Thus, under this category and size standard, the majority of firms can be considered small.

21. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[52] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[53] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[54] The SBA has approved these small size standards.[55] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[56] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[57] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[58] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[59]

22. **Paging.** In the *Paging Second* Report *and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[60] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[61] The SBA has approved this definition.[62] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses

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[51] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[52] Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

[53] *Id.* at 11068 ¶ 291.

[54] *Id.*

[55] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[56] *See generally* "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

[57] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

[58] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

[59] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[60] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order*, 12 FCC Rcd 2732, 2811-2812 ¶¶ 178-181 (*Paging Second Report and Order*); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085-10088 ¶¶ 98-107 (1999).

[61] *Paging Second Report and Order*, 12 FCC Rcd at 2811 ¶ 179.

[62] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

auctioned, 985 were sold.[63] Fifty-seven companies claiming small business status won 440 licenses.[64] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[65] 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[66] Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the Commission's *Trends in Telephone Service,* 375 such carriers reported that they were engaged in the provision of either paging or "messaging service."[67] Of these, the Commission estimates that 370 are small, under the SBA-approved small business size standard.[68] The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

23. **Broadband Personal Communications Service.** The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[69] For Block F, an additional small business size standard 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.[70] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[71] No small businesses within the SBA-approved small business size standards 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.[72] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[73] On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.[74] Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35,

[63] *See* "929 and 931 MHz Paging Auction Closes," *Public Notice*, 15 FCC Rcd 4858 (WTB 2000).

[64] *See id.*

[65] *See* "Lower and Upper Paging Band Auction Closes," *Public Notice*, 16 FCC Rcd 21821 (WTB 2002).

[66] *See* "Lower and Upper Paging Bands Auction Closes," *Public Notice*, 18 FCC Rcd 11154 (WTB 2003).

[67] *See Trends in Telephone Service,* Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers by Size of Business) (June 2005).

[68] 13 C.F.R. § 121.201, NAICS code 517211.

[69] *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*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); *see also* 47 C.F.R. § 24.720(b).

[70] *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*, 11 FCC Rcd 7824, 7852 ¶ 60.

[71] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[72] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

[73] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[74] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 2339 (2001).

including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

24. **Narrowband Personal Communications Service.** The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[75] Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.[76] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[77] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[78] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[79] The SBA has approved these small business size standards.[80] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.[81] Three of these claimed status as a small or very small entity and won 311 licenses.

25. **Specialized Mobile Radio.** The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[82] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[83] The SBA has approved these small business size standards for the 900 MHz Service.[84] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800

[75] Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

[76] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

[77] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

[78] *Id.*

[79] *Id.*

[80] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[81] *See* "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

[82] 47 C.F.R. § 90.814(b)(1).

[83] *Id.*

[84] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[85] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[86]

26. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

27. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

28. **Private Land Mobile Radio.** Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.[87] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular services but instead use the licensed facilities in support of other business activities, the Commission notes that the current Census numbers are likely overbroad. We also note that, for some such licensees, it might be appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[88]

29. **Fixed Microwave Services.** Fixed microwave services include common carrier,[89] private-operational fixed,[90] and broadcast auxiliary radio services.[91] Currently, there are approximately

[85] *See* "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[86] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[87] *See* 13 C.F.R. § 121.201, NAICS code 517212.

[88] *See generally* 13 C.F.R. § 121.201.

[89] 47 C.F.R. §§ 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[90] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See generally* 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.

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this analysis, the Commission will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies—that is, an entity with no more than 1,500 persons.[92] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

30. **39 GHz Service.** The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[93] "Very small business" 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.[94] The SBA has approved these definitions.[95] The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

31. **Local Multipoint Distribution Service.** An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[96] 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.[97] These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.[98] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27,

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(...continued from previous page)

[91] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. 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.

[92] 13 C.F.R. § 121.201, NAICS code 517212.

[93] *See* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

[94] *Id.*

[95] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002.

[96] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689-90 ¶ 348 (1997).

[97] *Id.*

[98] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

32. **218-219 MHz Service.** The first auction of 218-219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[99] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[100] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[101] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[102] The SBA has approved of these definitions.[103] At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

33. **Location and Monitoring Service.** Multilateration Location and Monitoring Service (LMS) systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[104] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[105] These definitions have been approved by the SBA.[106] An auction for multilateration LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. The Commission cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions. In addition, there are numerous site-by-site non-multilateration licensees, and the Commission does not know how many of these providers have annual revenues of no more than $15 million. The

[99] *See* "Interactive Video and Data Service (IVDS) Applications Accepted for Filing," *Public Notice*, 9 FCC Rcd 6227 (1994).

[100] Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

[101] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

[102] *Id.*

[103] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[104] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 ¶ 20 (1998); *see also* 47 C.F.R. § 90.1103

[105] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192 ¶ 20; *see also* 47 C.F.R. § 90.1103.

[106] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

Commission assumes, for purposes of this analysis, that all of these licenses are held by small entities, as that small business size standard is established by the SBA.

34. **Rural Radiotelephone Service.** The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.[107] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

35. **Air-Ground Radiotelephone Service.** The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.[108] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

36. **Offshore Radiotelephone Service.** This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.[109] The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this analysis, that all of the 55 licensees are small entities, as that term is defined by the SBA.

37. **Multiple Address Systems.** Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[110] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[111] The SBA has approved of these definitions.[112] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[113] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

38. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more

[107] 13 C.F.R. § 121.201, NAICS code 517212.

[108] *Id.*

[109] *Id.*

[110] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008 ¶ 123 (2000).

[111] *Id.*

[112] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

[113] *See* "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (2001).

appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.[114] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

39. **Incumbent 24 GHz Licensees.** The rules at issue could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons.[115] The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[116] and TRW, Inc. The Commission understands that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

40. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[117] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[118] The SBA has approved these definitions.[119] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

41. **Cable Television Relay Service.** This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The Census Bureau has defined a category of Cable and Other Program Distribution as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."[120] The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[121] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire

[114] *See* 13 C.F.R. § 121.201, NAICS code 517212.

[115] *See id.*

[116] Teligent acquired the Digital Electronic Message Service (DEMS) licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[117] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 ¶ 77 (2000) (*24 GHz Report and Order*); *see also* 47 C.F.R. § 101.538(a)(2).

[118] *24 GHz Report and Order*, 15 FCC Rcd at 16967 ¶ 77; *see also* 47 C.F.R. § 101.538(a)(1).

[119] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

[120] U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[121] 13 C.F.R. § 121.201, NAICS code 517510.

year.[122] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[123] Thus, under this size standard, the majority of firms can be considered small.

42. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[124] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[125] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.126 Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.[127] Thus, under this second size standard, most cable systems are small.

43. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[128] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[129] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[130] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[131] and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

44. **Multichannel Video Distribution and Data Service.** Multichannel Video Distribution and Data Service (MVDDS) is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band.

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[122] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[123] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[124] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[125] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[126] 47 C.F.R. § 76.901(c).

[127] Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[128] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[129] 47 C.F.R. § 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

[130] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[131] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

Licenses in this service were auctioned in January 2004, with 10 winning bidders for 192 licenses. Eight of these 10 winning bidders claimed small businesses status for 144 of these licenses.[132]

45. **Amateur Radio Service.** These licensees are believed to be individuals, and therefore are not small entities.

46. **Aviation and Marine Services.** Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[133] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[134] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

47. **Personal Radio Services.** Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of the rules.[135] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[136] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, the Commission applies the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[137] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to

[132] "Multichannel Video Distribution and Data Service Auction Closes," *Public Notice*, DA 04-215 (Feb. 2, 2004).

[133] 13 CFR § 121.201, NAICS code 517212 (2002).

[134] Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[135] 47 C.F.R. Part 90.

[136] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 C.F.R. Part 95.

[137] 13 C.F.R. § 121.201, NAICS Code 517212.

the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

48. Despite the paucity, or in some instances, total absence, of information about their status as licensees or regulatees or the number of operators in each such service, users of spectrum in these services are listed here as a matter of Commission discretion in order to fulfill the mandate imposed on the Commission by the RFA to regulate small business entities with an understanding towards preventing the possible differential and adverse impact of the Commission's rules on smaller entities. Further, the listing of such entities, despite their indeterminate status, should provide them with fair and adequate notice of the possible impact of the instant proposals.

49. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[138] There are a total of approximately 127,540 licensees in these services. Governmental entities[139] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[140]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

50. The *Notice* seeks to evaluate whether changes to the existing service rules pertaining to 700 MHz Band licenses may ultimately permit more effective use of this spectrum to better meet the needs of today's consumers. To the extent the Commission's past decisions no longer reflect the best approach with regard to the license area sizes, band plan, performance requirements, renewal criteria, length of license terms, power limits, and 911/E911 & hearing aid-compatibility requirements, the *Notice* seeks comment on the possibility of making appropriate adjustments to various requirements that will serve the public interest.

51. Although the *Notice* does not propose any specific rules with new reporting, recordkeeping or other compliance requirements for small entities on the aforementioned issues, the Commission is open to comment on what, if any, requirements it should, or should not, impose for small entities if it adopts new rules based on the proposals in the *Notice*. For example, there is the possibility that modifying performance requirements and secondary market provisions for certain 700 MHz Band licenses could require new reporting and recordkeeping practices for small entities regarding where and

[138] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15-90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, people with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

[139] 47 C.F.R. § 1.1162.

[140] 5 U.S.C. § 601(5).

how spectrum is used. In addition, new renewal criteria could possibly be established such that the Commission would codify new requirements for renewal or, in the alternative, list factors that are relevant to licensees' (including small entities') informational showings that renewal is in the public interest. Under such a proposal, the *Notice* states that such licensees may have to report on factors such as the level of service and whether it was "substantial"; whether service was ever interrupted and discontinued; whether service has been provided to any rural or tribal areas; whether a licensee has received any requests from others seeking to enter into spectrum leasing arrangements, and whether it has entered into any such arrangements; and any other factors typically associated with assessments of a licensee's level of service to the public. The *Notice* also seeks comment on whether any additional modifications to 700 MHz Band power limit rules would be appropriate; in this regard, it states that such action could result in, *e.g.*, the use of the notification procedures for high-powered Upper 700 MHz Band operations that are currently applied to high-powered Lower 700 MHz Band operations. A tentative conclusion to require certain 700 MHz Band, and Part 27, licensees to comply with the 911/E911 and hearing aid-compatibility requirements (as well as seeking comment on whether to apply these requirements to licensees in other WRS) is another example of a projected compliance requirement that could affect small entities.

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

52. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities."[141]

53. In the *Notice*, the Commission specifically considers small business alternatives in seeking comment on the existing size of geographic service areas for the 700 MHz Band. Specifically, the *Notice* seeks comment on whether there is a need for additional small geographic service area licenses in the band, such as the 734 CMAs. The Commission notes that the Rural Cellular Association claims that small entities are unable to compete effectively for licenses that combine rural and major metropolitan areas and the availability of RSAs (as opposed to other small units) is especially important to small and rural carriers given their potential greater interest in serving these high-cost areas than large regional and nationwide carriers.

54. On this question of the optimal size of the service areas for the 700 MHz Band, the *Notice* seeks comment on whether firms, including small entities, need additional access to spectrum over small service areas. It considers in general the economic impact to small entities of the possible transaction costs associated with the assignment of additional spectrum over small and large service areas alike. For example, the *Notice* seeks comment on the factors that the Commission should use in balancing the needs of small and rural carriers as well as large and national carriers as they seek to provide service to their rural customers.

55. The *Notice* also seeks comment on the optimal service area size(s) for the remaining unauctioned licenses to the extent a demonstrated need exists for smaller or other sized areas. With respect to impacts to small entities, the *Notice* states that both large nationwide providers as well as small regional and rural providers may be able to make use of the 700 MHz Band, yet explains that the optimal size of geographic service area is different for these two types of providers, and licenses for areas that are larger or smaller than desired will impose transaction costs on those parties that wish to acquire them. The *Notice* seeks comment on the degree and likelihood of such economic costs as 700 MHz Band spectrum is licensed in the future, and the extent to which the transaction costs of aggregating,

[141] 5 U.S.C. §§ 603(c)(1)-(c)(4).

disaggregating, or partitioning spectrum are a significant concern for those parties that most highly value this spectrum, including small entities. The *Notice* also discusses how certain providers in the 700 MHz Band have focused on smaller sized service areas, and it notes that a number of small providers have acquired Lower 700 MHz Block C spectrum apparently to provide services specifically to rural areas over RSAs. Thus, the *Notice* seeks comment on what the optimal size for smaller areas would be, as well as how the size of licensed geographic service area impacts the services that are currently being developed, and which may be developed, for use of the 700 MHz Band.

56. The *Notice* then seeks comment on which spectrum blocks in the 700 MHz Band would be suitable for licensing over small or other sized areas. Specifically, the Commission seeks comment on the impact of designating the unpaired 6 megahertz Block E in the Lower 700 MHz Band for small-area licensing. Regarding this significant alternative, the *Notice* inquires if 6 megahertz is sufficient to meet small and/or rural carriers' spectrum needs, and asks commenters to address whether there are broadband technologies that can operate on unpaired spectrum such that the 6 megahertz of spectrum in Block E would be suitable for potential reassignment. Taking into account the resources available to small entities, the *Notice* also addresses how any need for small and rural carriers to provide adjacent TV Channel 51 protection might affect their ability to provide service to those areas if Block A were designated for small area licensing.

57. In addition to seeking comment on the size of service areas, the Commission seeks comment on possibly changing the size of spectrum blocks in the 700 MHz Band plan. To the extent the Commission decides to auction and assign additional licenses over service area sizes other than the six EAGs, the *Notice* seeks comment on whether reconfiguring or sub-dividing existing spectrum blocks in the band plans in the 700 MHz Band could better accommodate such assignments and thereby facilitate access to spectrum by small entities. In particular, the *Notice* seeks comment on dividing the 20-megahertz Block D license in the Upper 700 MHz Band into two or more license blocks to create additional opportunities for firms to acquire spectrum, including small business and rural providers.

58. In the next section of the *Notice*, the Commission seeks comment on whether it should take additional action with regard to the spectrum in the 700 MHz Band so as to help facilitate access to that spectrum and the provision of service to all consumers, including those in rural areas. In contrast to the significant alternatives above on the size of geographic service areas and/or spectrum blocks that may help increase access to spectrum at auction for a wide variety of entities, this section seeks comment on whether the Commission's existing "substantial service" performance requirements and related policies pertaining to 700 MHz Band licenses serve to facilitate deployment of wireless services in the 700 MHz Band. For example, the *Notice* seeks comment on significant alternatives that impact small entities, such as the possibility of adopting "keep what you use" re-licensing mechanisms. It also seeks comment on options that may facilitate access to spectrum in the secondary market for all potential service providers, including small entities and those specifically seeking to deliver service to rural areas and tribal lands.

59. The next portions of the *Notice* seek comment on potential changes to several of the Commission's initial determinations applicable to 700 MHz Band licenses, changes which could affect small entities. First, the *Notice* requests comment on whether to amend Commission rules to clarify the requirements and procedures of the renewal process for 700 MHz Band licenses, particularly as they relate to existing rules requiring demonstrations of "substantial service" for renewal applicants involved in comparative proceedings. Second, the *Notice* invites comment on extending the license terms of 700 MHz Band licenses to an expiration date beyond 2015 in order to afford licensees a sufficient period of time for deployment of new 700 MHz Band services once the DTV transition is complete. Third, the *Notice* seeks comment on whether the power limits in the existing rules for the 700 MHz Band spectrum should be revised. In addition to the discussion above regarding possible new reporting, recordkeeping or other compliance requirements that could impact small entities,[142] it is not anticipated that any rules

[142] *See supra* section D.

adopted in this area would adversely impact small entities. Both small and large entities may benefit from changes to these rules.

60. Finally, because Commission rules have not been expanded to include licensees (including small entities) providing service in later authorized, additional WRS such as the 700 MHz Band, the *Notice* seeks comment on the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to Part 27 of the rules such as AWS-1, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands. It then seeks comment on how to modify Commission rules to ensure that they include all similar WRS. Because many of the services permitted across the WRS can be expected to be similar to services presently subject to the 911/E911 and hearing aid-compatibility requirements, the *Notice* seeks comment on whether to amend the rules to ensure that all similar wireless services that meet certain criteria discussed in the *Notice* will be subject to the 911/E911 and hearing aid-compatibility requirements. To minimize significant economic impact to the many firms, including small entities, that are or will become licensees in the various WRS, the *Notice* seeks comment on impacts including, *e.g.*, the time necessary to complete such changes to the standards.

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

61. None.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket Nos. 06-150, 01-309, and CC Docket No. 94-102).

With today's action, the Commission continues its efforts to provide consumers with new and advanced wireless services by making spectrum available for wireless broadband.

The Commission will soon auction 90 MHz of spectrum in the Advanced Wireless Services band. In this item, we seek comment on our service rules for the 700 MHz band, which is similarly well-suited for the provision of wireless broadband services and must be auctioned for commercial use by January 28, 2008. We are reevaluating our service rules for this band to account for Congress' recent adoption of digital television legislation and the needs of both small and large service providers. We also intend to ensure that service providers in this band and other broadband bands comply with our E911 and hearing aid-compatibility rules.

I expect that wireless services will continue to be an increasing part of broadband service deployment. Consumers are increasingly demanding access to broadband services any time they want it, wherever they want it. This spectrum will help bring consumers everywhere more opportunities to use these services both at home and on the go.

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket Nos. 06-150, 01-309, and CC Docket No. 94-102).

With the grand-daddy of all auctions coming at us in 700 MHz in less than two years, I am encouraged that we begin today the process of developing service rules for it. Getting this one absolutely right is absolutely necessary if we are going to reap the full measure of benefit from this beach-front property spectrum. We're on the right road here, we're asking the right questions, and I want to thank the Bureau for bringing this especially thoughtful and well-crafted item to us.

As I stated earlier today in our discussion of BPL technology, we have a broadband crisis in this country that stems from a lack of competition. Wireless technologies can play, I believe, a critical role in remedying the egregious gaps in our national communications system. The 700MHz spectrum that we will auction in 2008 is key to spreading the benefits of broadband across our country. In order to make sure that our nation's consumers get the most out of this great national resource, we need to begin by answering some difficult questions about the service rules for this band.

One critical issue is the size of the geographic service areas. I am pleased that we have heeded the Rural Cellular Association's call to consider assigning a significant number of these licenses over smaller geographic areas. Smaller providers need a fighting chance to bid against the large national carriers for spectrum that is ideally suited for rural broadband applications. I look forward to a record that will inform us how to best achieve this goal.

Another critical issue involves the build-out and renewal standards to be applied in this valuable spectrum. We need, of course, to give companies breathing room and regulatory certainty so they can raise capital and build networks. At the same time, we must not countenance spectrum warehousing or any other unreasonable delay in putting our nation's spectrum to work. The demand for wireless broadband is just too pressing to allow companies to sit on spectrum, and I look forward to developing rules that will put licenses in the hands of those most capable of bringing new services to market.

I am also pleased with our tentative conclusion that the full range of E911 and hearing aid compatibility rules will apply to services in this band and, I might add, in the Advanced Wireless Services band whose auction is more imminent. This is an area wherein any lingering legal uncertainty must be promptly dispelled. These broadband wireless bands must be available to and safe for all Americans.

Additionally, I want to commend and thank Commissioner Adelstein for drawing attention to the challenge of promoting the deployment of wireless networks on tribal lands. This Commission's job is to make communications by wire and radio available to ***all*** our people, and this auction can be tremendously important for bringing advanced telecommunications to Indian Country.

I recognize that this is the first in several steps that the Commission must take in order to conduct a successful 700MHz auction and to deliver proceeds – hopefully copious proceeds – to the U.S. Treasury. We also face important questions about how to organize public safety spectrum in this band and we still need to consider interesting proposals about how best to make use of our 700 MHz guardbands. I look forward in the coming months to working with the Chairman and my fellow Commissioners so that this auction goes off smoothly and that this spectrum can begin delivering wireless broadband services as quickly as possible.

Finally, even as we lay groundwork for our auction of the 700 MHz spectrum, I want to reiterate my belief that the Commission must continue to expand the amount of unlicensed spectrum available for promising new technologies. I look forward to resolving the "TV white spaces" and "spectrum test bed" dockets, as well as other matters that will come before us, so as to continue to provide our nation's engineers and entrepreneurs with the resources they need to continue astounding us with their creativity and innovation.

Thanks again to the Bureau for an excellent item.

STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket Nos. 06-150, 01-309, and CC Docket No. 94-102).

With this Notice, the Commission rightly seeks comment on possible changes to the service rules governing licenses in the 700 MHz band. Over four years have passed since the service rules and band plans were first adopted for this spectrum. Since then, the rapidly evolving mobile wireless industry has experienced tremendous subscriber growth, the emergence of new and exciting product offerings, and increased consolidation. In addition to these dynamic changes, the enactment of the Digital Television and Public Safety Act of 2005, with its specific benchmarks, is a significant milestone that further prompts the opportunity for the Commission to consider whether or how to revise our regulatory approach to both the Upper and Lower 700 MHz Bands. I fully support the timing of this Notice, as I have regularly commented how exceedingly important it is that we do what we can to keep the Commission on the leading edge of spectrum-based technology and policy.

The Notice we adopt today sets up an important discussion to ensure that the 700 MHz band is quickly and efficiently put to use and that parts of the spectrum do not remain an untapped well for the thirsty. I have long had a strong interest in promoting active spectrum use, and am very pleased that our item seeks comment on whether we should revise performance requirements for licensees in the 700 MHz Band. We ask important questions on whether the country would be better served by alternate performance requirements such as more specific construction benchmarks or a "keep what you use" re-licensing mechanism.

I am particularly interested in reactions to the suggestion of a "triggered keep what you use" rule, in which the Commission, rather than reclaiming unused spectrum after a period of time, would reclaim spectrum only in the event a party other than the licensee is interested in securing access to the spectrum in an unserved portion of the license area. My hope is that this discussion will lead to the Commission moving to more of a "carrot and stick" approach to performance requirements – an approach that I have long advocated – in the future by which the Commission promotes flexibility and innovation, yet expects more specific results as well.

The dialogue generated by this Notice should enable the Commission to better serve communities, particularly those in rural and other unserved areas, where licensees do not plan to use or lease the spectrum they acquired. For example, I just returned from our Indian Telecommunications Initiative workshop and roundtable in San Diego and access to spectrum was one of the big issues I heard from Tribal leaders attending the conference. I want to thank my colleagues for agreeing to add questions to this item addressing the unique challenges of wireless service on Tribal lands. The economic and social prosperity of Native American communities depends on access to state-of the-art communications technologies, so it is important that we seek comment on flexible licensing approaches that may make it easier for community-based providers, like Tribes, to get access to wireless broadband opportunities on a more localized basis.

I also am particularly pleased that the Notice asks whether the Commission should take another look at the "substantial service" standard in the renewal of licenses in the event we continue with that approach. In our recently completed BRS/EBS reconsideration item, I emphasized the importance of adopting "safe harbors" that are meaningful. By meeting safe harbors, operators are provided with the

security that they absolutely have complied with the Commission's substantial service requirements. It is my belief that if we are to provide such a security option and allow the flexibility of a substantial service construction standard, we should make safe harbors that are meaningful and worthwhile – so I am pleased that we continue that discussion here.

In addition to seeking comment on how we can put the 700 MHz spectrum to its most active use, the Notice seeks comment on the size of the current service areas and the size of the current spectrum blocks. If we want to see better and more advanced wireless service in the future, we need to make spectrum more easily accessible. I fully support this discussion on whether we should reconfigure or sub-divide the existing spectrum blocks in the 700 MHz Band in order to fulfill this goal. As many of you know, in the Advanced Wireless Services proceeding, I was very involved in our bandplan decision, which ultimately was well received by small and large entities alike, and I look forward to reviewing the record in this proceeding as well since I was not at the Commission for our initial bandplan determination.

I am very pleased that the item we adopt today builds on a number of the questions raised in the Further Notice of Proposed Rule Making in our rural wireless proceeding, an item that I strongly supported. With recent consolidation in the communications industry, it becomes even more critical that we make vibrant, spectrum-based communications opportunities available to all consumers and companies. The 700 MHz band should be a real opportunity for new and incumbent carriers to expand existing networks and develop new and exciting wireless broadband services for all communities. I am pleased that we are giving the 700 MHz band the attention it deserves by evaluating our policies to make sure we provide what is best for American consumers and do not undercut the ability of wireless innovators to get access to new or unused spectrum.

I would like to commend the staff of the Wireless Telecommunications Bureau for providing us with a very comprehensive and well drafted Notice. With the digital transition on the horizon, this Notice comes at a crucial time and asks critical questions regarding spectrum use that will impact the 700 MHz band and wireless services to come. Initiating dialogue on these matters can only serve American consumers well. I look forward to working with my colleagues and the Bureau in tackling these important issues in the upcoming months.

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket Nos. 06-150, 01-309, and CC Docket No. 94-102).

This Notice of Proposed Rulemaking seeks comment on how the Commission can encourage wireless carriers to offer new and better services. Spectrum that is currently occupied by UHF television broadcasters will soon be available, and I believe we need to create an environment that encourages businesses to use this spectrum to provide innovative new wireless services. The Commission seeks comment on possible changes to service rules for wireless licenses in the 700 MHz Band that will help create such an environment.

New technology creates new opportunities to bring wireless services to all Americans. Recently, I met with a group of analysts, entrepreneurs, and industry executives in Northern California and heard firsthand the demands placed on carriers to offer more services to more consumers, which in turn has created increased demand for valuable spectrum, such as the 700 MHz Band.

The 700 MHz band is also ideal for getting a signal to customers in rural areas and will bring high-speed applications like streaming video to wireless customers. I particularly look forward to hearing ideas from industry experts and consumer advocates on how the Commission can facilitate deployment of wireless services to rural areas. I also would like to applaud the tentative conclusion that services in the 700 MHz Band that meet certain criteria should be subject to 911/E911 and hearing aid-compatible handset requirements. All Americans, regardless of geographic location or physical disability, should be able to access reasonably equivalent wireless services.

I look forward to working with my colleagues to determine the most effective use of this spectrum.

STATEMENT OF COMMISSIONER ROBERT M. McDOWELL

RE: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket Nos. 06-150, 01-309, and CC Docket No. 94-102).

The Digital Television Transition and Public Safety Act of 2005 (the DTV Act) makes several fundamental changes in the statutory regime applicable to the 700 MHz band spectrum. Perhaps most importantly, the DTV Act establishes a hard deadline of February 17, 2009, for the cessation of analog broadcasting in this spectrum. The DTV Act also requires the Commission to begin the auction for the licenses associated with the recovered analog spectrum no later than January 28, 2008, and to deposit the auction proceeds no later than June 30, 2008.

Given these congressional mandates, we have our work cut out for us. In this regard, I thank the Wireless Bureau for preparing this well-written, comprehensive notice, which will bolster our ability to complete our work expeditiously. And, I thank the Chairman for bringing this item to us today. I am delighted that wireless licensees and potential licensees – whether public safety or commercial – are now in a position to finalize plans for deploying in this "prime real estate." I look forward to actively engaging with my colleagues, and all interested parties, in the important effort to reexamine and finalize the service rules for the 700 MHz commercial band, including issues relating to E911 deployment, hearing aid compatibility and service to tribal areas.