

203. Using frequency coordination to award licenses for new EBS stations raises a variety of issues. First, we seek comment on whether there are entities that could be qualified to serve as an EBS frequency coordinator and the process by which the Commission should select one or more frequency coordinators. Second, we seek comment on the processes that a frequency coordinator would use to handle requests for EBS frequencies and to determine whether an application complies with the Commission's Rules. One possibility would be for a potential applicant to request a specific channel group and service area. Alternatively, a potential applicant could request a given number of channels in a specific area of operation, and the frequency coordinator could pick channels based on the available inventory. We also seek comment on the appropriate geographic area for new licenses. Specifically, we seek comment on whether new licenses should be issued using 35-mile radius geographic service areas of current incumbent licensees, or whether some other size would be appropriate. We also seek comment on the appropriate size of the frequency block for EBS licenses awarded through the frequency coordination process. Available alternatives include: (1) issuing a separate license for each channel group; (2) licensing MBS channels separately and licensing LBS and UBS channels together; (3) issuing one UBS license, one MBS license, and one LBS license in a given geographic area. Finally, we ask whether it is appropriate or necessary to place limitations on the number of applications that a licensee or its affiliates could file for new EBS stations in a given time period in order to ensure that a wide variety of EBS licensees can access spectrum. We seek comment on these and any other issues relating to the use of frequency coordination to assign new EBS licenses.

204. Our discussion of specific proposals and questions is not meant to preclude commenters from offering other proposals or raising other questions relating to the assignment of new EBS licenses. We seek comment on all questions and issues relating to the assignment of new EBS licenses.

VII. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose

205. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.⁵⁸³

B. Comment Period and Procedures

206. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

207. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/egb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

⁵⁸³ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

208. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

209. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

210. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D. C. 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, 1-800-378-3160.

C. Final Regulatory Flexibility Analysis of BRS/EBS 4th MO&O

211. The Regulatory Flexibility Act (RFA)⁵⁸⁴ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁵⁸⁵ Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in this *BRS/EBS 4th MO&O* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix B.

D. Initial Regulatory Flexibility Analysis

212. As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁸⁶ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *BRS/EBS 2nd FNPRM*. The analysis is found in Appendix C. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *BRS/EBS 2nd FNPRM*, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *BRS/EBS 2nd FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

⁵⁸⁴ See 5 U.S.C. § 601-612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁵⁸⁵ 5 U.S.C. § 605(b).

⁵⁸⁶ See 5 U.S.C. § 603.

E. Paperwork Reduction Analysis

213. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

214. In this present document, we have assessed the effects of requiring licensees to provide information concerning their base stations to any nearby licensee upon request, and find that this requirement will benefit companies with fewer than 25 employees because it will help them to enjoy interference-free operations. We anticipate that the information exchange will consist of a limited number of technical parameters of a licensee's operations that licensees will have already established and recorded for their own operational purposes. Because licensees will already have such information at their disposal, it will not be burdensome to convey such information when requested. Additionally, because licensees will only be required to submit such information upon request from a neighboring licensee, this significantly limits the amount of potential requests for information. Therefore, we conclude that this information exchange will not burden companies with fewer than 25 employees.

215. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, 445 12th Street, S.W., Room 1-C804, Washington, D.C. 20554, or via the Internet to <Judith-B.Herman@fcc.gov>, and to Nicholas Fraser, Office of Management and Budget (OMB), via email to Nicholas_A._Fraser@omb.eop.gov or via fax at 202-395-5167.

F. Further Information

216. For further information regarding the *Big LEO Third Order on Reconsideration and Sixth Memorandum Opinion and Order*, please contact Howard Griboff, Policy Division, International Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, at 202-418-0657 or via the Internet at Howard.Griboff@fcc.gov or Jamison Prime, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, at 202-418-7474 or via the Internet at Jamison.Prime@fcc.gov. For further information concerning the *BRS/EBS Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking*, contact John Schauble, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-0797 or via the Internet to John.Schauble@fcc.gov.

VIII. ORDERING CLAUSES

217. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this *Third Order on Reconsideration, Sixth Memorandum Opinion and Order, and Fourth Memorandum Opinion and Order* is hereby ADOPTED.

218. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed in these proceedings ARE GRANTED to the extent indicated and are otherwise DENIED.

219. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, that the petitions

for declaratory ruling filed by Instructional Telecommunications Foundation, Inc. on March 13, 2007, New Trier High School District #203 on July 26, 2007, Shekinah Network on November 27, 2007, and Boston Catholic Television Center, Inc. on December 14, 2007 ARE GRANTED to the extent indicated herein and are otherwise DENIED.

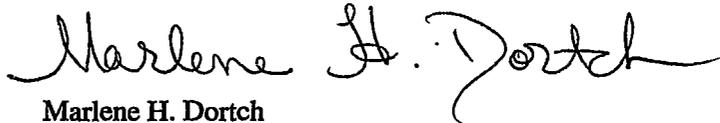
220. IT IS FURTHER ORDERED that the proceeding entitled Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, WT Docket No. 02-68 IS REINSTATED.

221. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this *Second Further Notice of Proposed Rulemaking*, and that comment is sought on these proposals.

222. IT IS FURTHER ORDERED that the Final Regulatory Flexibility Analysis IS ADOPTED.

223. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third Order on Reconsideration, Sixth Memorandum Opinion and Order, and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Part 27 of Title 47 of the Code of Federal Regulations is amended as follows:

I. PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Amend § 27.5 by revising paragraphs (i)(2)(iii) to read as follows:

§ 27.5 Frequencies.

(i) ***

(2) ***

(iii) Upper Band Segment (UBS): The following channels shall constitute the Upper Band Segment:

BRS Channel KH1: 2614.00000–2614.33333 MHz
 BRS Channel KH2: 2614.33333–2614.66666 MHz
 BRS Channel KH3: 2614.66666–2615.00000 MHz
 EBS Channel KG1: 2615.00000–2615.33333 MHz
 EBS Channel KG2: 2615.33333–2615.66666 MHz
 EBS Channel KG3: 2615.66666–2616.00000 MHz
 BRS Channel KF1: 2616.00000–2616.33333 MHz
 BRS Channel KF2: 2616.33333–2616.66666 MHz
 BRS Channel KF3: 2616.66666–2617.00000 MHz
 BRS Channel KE1: 2617.00000–2617.33333 MHz
 BRS Channel KE2: 2617.33333–2617.66666 MHz
 BRS Channel KE3: 2617.66666–2618.00000 MHz
 BRS Channel 2: 2618–2624 MHz
 BRS/EBS Channel E1: 2624–2629.5 MHz
 BRS/EBS Channel E2: 2629.5–2635 MHz
 BRS/EBS Channel E3: 2635–2640.5 MHz
 BRS/EBS Channel F1: 2640.5–2646 MHz
 BRS/EBS Channel F2: 2646–2651.5 MHz
 BRS/EBS Channel F3: 2651.5–2657 MHz
 BRS Channel H1: 2657–2662.5 MHz
 BRS Channel H2: 2662.5–2668 MHz
 BRS Channel H3: 2668–2673.5 MHz
 EBS Channel G1: 2673.5–2679 MHz
 EBS Channel G2: 2679–2684.5 MHz
 EBS Channel G3: 2684.5–2690 MHz

Note to paragraph (i)(2): No 125 kHz channels are provided for channels in operation in this service. The 125 kHz channels previously associated with these channels have been reallocated to Channel G3 in the upper band segment.

3. Amend § 27.13 by adding new paragraph (h) to read as follows:

§ 27.13 License Period.

(h) *BRS and EBS*. BRS and EBS authorizations shall have a term not to exceed ten years from the date of original issuance or renewal. Unless otherwise specified by the Commission, incumbent BRS authorizations shall expire on May 1 in the year of expiration.

4. Amend § 27.14 by adding new paragraphs (e)(4) and (e)(5) to read as follows:

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(e) ***

(4) If the GSA of a licensee is less than 1924 square miles in size, and there is an overlapping co-channel station licensed or leased by the licensee or its affiliate, substantial service may be demonstrated by meeting the requirements of paragraph (e)(1) or (e)(2) of this section with respect to the combined GSAs of both stations.

(5) If the GSA of a BTA authorization holder, is less than one-half of the area within the BTA for every BRS channel, substantial service may be demonstrated for the licenses in question by meeting the requirements of paragraph (e)(1) or (e)(2) of this section with respect to the combined GSAs of the BTA authorization holder, together with any incumbent authorizations licensed or leased by the licensee or its affiliates.

5. Amend § 27.53(m) by revising the introductory text and paragraphs (2) and paragraph (4) to read as follows:

§ 27.53 Emission limits.

(m) For BRS and EBS stations, the power of any emissions outside the licensee's frequency bands of operation shall be attenuated below the transmitter power (P) measured in watts in accordance with the standards below. If a licensee has multiple contiguous channels, out-of-band emissions shall be measured 3 megahertz above the upper and below the lower combined licensed channel edges.

(2) For digital base stations, the attenuation shall be not less than $43 + 10 \log (P)$ dB, unless a documented interference complaint is received from an adjacent channel licensee with an overlapping Geographic Service Area. Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on channel BRS No. 1 on the same terms and conditions as adjacent channel BRS or EBS licensees. Provided that a

documented interference complaint cannot be mutually resolved between the parties prior to the applicable deadline, then the following additional attenuation requirements shall apply:

(i) If a pre-existing base station suffers harmful interference from emissions caused by a new or modified base station located 1.5 km or more away, within 24 hours of the receipt of a documented interference complaint the licensee of the new or modified base station must attenuate its emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block and shall immediately notify the complaining licensee upon implementation of the additional attenuation. No later than 60 days after the implementation of such additional attenuation, the licensee of the complaining base station must attenuate its base station emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(ii) If a pre-existing base station suffers harmful interference from emissions caused by a new or modified base station located less than 1.5 km away, within 24 hours of receipt of a documented interference complaint the licensee of the new or modified base station must attenuate its emissions by at least $67 + 10 \log (P) - 20 \log (D \text{ km} / 1.5)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the complaining licensee, or if both base stations are co-located, limit its undesired signal level at the pre-existing base station receiver(s) to no more than -107 dBm measured in a 5.5 megahertz bandwidth and shall immediately notify the complaining licensee upon such reduction in the undesired signal level. No later than 60 days after such reduction in the undesired signal level, the complaining licensee must attenuate its base station emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(iii) If a new or modified base station suffers harmful interference from emissions caused by a pre-existing base station located 1.5 km or more away, within 60 days of receipt of a documented interference complaint the licensee of each base station must attenuate its base station emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the other licensee.

(iv) If a new or modified base station suffers harmful interference from emissions caused by a pre-existing base station located less than 1.5 km away, within 60 days of receipt of a documented interference complaint: (a) the licensee of the new or modified base station must attenuate its OOB by at least $67 + 10 \log (P) - 20 \log (D \text{ km} / 1.5)$ measured 3 megahertz above or below, from the channel edge of its frequency block of the other licensee, or if the base stations are co-located, limit its undesired signal level at the other base station receiver(s) to no more than -107 dBm measured in a 5.5-megahertz bandwidth; and (b) the complaining licensee must attenuate its emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(4) For mobile digital stations, the attenuation factor shall be not less than $43 + 10 \log (P)$ dB at the channel edge and $55 + 10 \log (P)$ dB at 5.5 megahertz from the channel edges. Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on BRS Channel 1 on the same terms and conditions as adjacent channel BRS or EBS licensees.

6. Amend § 27.55(a)(4) by revising paragraphs (i) and (iii) to read as follows:

§ 27.55 Signal strength limits.

(a) ***

(4) ***

(i) Prior to transition, the signal strength at any point along the licensee's GSA boundary does not exceed the greater of that permitted under the licensee's Commission authorizations as of January 10, 2005 or 47 dB μ V/m.

(iii) Following transition, for stations in the MBS, the signal strength at any point along the licensee's GSA boundary must not exceed the greater of $-73.0 + 10 \log(X/6)$ dBW/m², where X is the bandwidth in megahertz of the channel, or for facilities that are substantially similar to the licensee's pre-transition facilities (including modifications that do not alter the fundamental nature or use of the transmissions), the signal strength at such point that resulted from the station's operations immediately prior to the transition, provided that such operations complied with paragraph (a)(4)(i) of this section.

7. Amend § 27.1201 by revising paragraphs(a)(3) and (d) to read as follows:

§ 27.1201 EBS eligibility.

(a) ***

(3) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a State educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage. Documentation from proposed receive sites which are to establish the eligibility of an entity not serving its own enrolled students for credit should be in letter form, written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. No receive site more than 35 miles from the proposed station's central reference point, or outside the applicants' proposed GSA, shall be used to establish basic eligibility. Where broadband or data services are proposed, the letter should indicate that the data services will be used in furtherance of the institution's educational mission and will be provided to enrolled students, faculty and staff in a manner and in a setting conducive to educational usage. Where traditional educational or instructional video services are proposed, the letter should indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. Where educational or instructional video services are proposed, the letter should discuss the types of programming and hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such additional authorization(s) must be provided.

(d) This paragraph applies to EBS licensees and applications licensed or filed pursuant to the provisions of §27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005, or §§74.990 through 74.992 contained in the edition of 47 CFR parts 70 to 79, revised as of October 1, 2004, and that do not meet the eligibility requirements of paragraph (a) of this section. Such licensees may continue to operate pursuant to the terms of their existing licenses, and their licenses may be renewed, assigned, or transferred, so long as the licensee is otherwise in compliance with this chapter. Applications filed pursuant to the provisions of § 27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005 or §§ 74.990 through 74.992 contained in the edition of 47 CFR

parts 70 through 79, revised as of October 1, 2004 may be processed and granted, so long as such applications were filed prior to July 19, 2006. The provisions of §§ 27.1203(b)-(d) and 27.1214 of this subpart do not apply to licenses governed by this paragraph.

8. Amend § 27.1207 by revising paragraph(a) and the introductory text of paragraph (b) to read as follows:

27.1207 BTA license authorization.

- (a) Winning bidders must file an application (FCC Form 601) for an initial authorization.
- (b) Initial authorizations for BRS granted after January 1, 2008, shall be blanket licenses for all BRS frequencies identified in 27.5(i)(2) and based on the geographic areas identified in 27.1208. Blanket licenses cover all mobile and response stations.

9. Amend § 27.1208 by revising the section heading and the undesignated text to read as follows:

§ 27.1208 BTA Service areas.

Except for incumbent BRS licenses, BRS service areas are Basic Trading Areas (BTAs) or additional service areas similar to BTAs adopted by the Commission. BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39. The following are additional BRS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Gulf of Mexico Zone A; Gulf of Mexico Zone B; Gulf of Mexico Zone C; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The boundaries of Gulf of Mexico Zone A are from an area twelve nautical miles from the shoreline at mean high tide on the north and east, to the limit of the Outer Continental Shelf to the south, and to longitude 91°00' to the west. The boundaries of Gulf of Mexico Zone B are from an area twelve nautical miles from the shoreline at mean high tide on the north, to the limit of the Outer Continental Shelf to the south, to longitude 91°00' to the east, and to longitude 94°00' to the west. The boundaries of Gulf of Mexico Zone C are from an area twelve nautical miles from the shoreline at mean high tide on the north and west, to longitude 94°00' to the east, and to a line 281 kilometers from the reference point at Linares, N.L., Mexico on the southwest. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Peñuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

10. Amend § 27.1214 by revising paragraph (c) to read as follows:

§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.

(c) All spectrum leasing arrangements involving EBS spectrum must afford the EBS licensee an opportunity to purchase or to lease the dedicated or common EBS equipment used for educational purposes, or comparable equipment in the event that the spectrum leasing arrangement is terminated.

11. Add § 27.1217 to read as follows:

§ 27.1217 Competitive Bidding Procedures for the Broadband Radio Service.

Mutually exclusive initial applications for BRS licenses in the 2500-2690 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

12. Add § 27.1218 to read as follows:

§ 27.1218 Designated Entities.

(a) Eligibility for small business provisions. (1) A small business is an entity that, together with all attributed parties, has average gross revenues that are not more than \$40 million for the preceding three years.

(2) A very small business is an entity that, together with all attributed parties, has average gross revenues that are not more than \$15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with all attributed parties, has average gross revenues that are not more than \$3 million for the preceding three years.

(b) Bidding credits. (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use a bidding credit of 15 percent, as specified in §1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use a bidding credit of 25 percent, as specified in §1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(3) A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs, may use a bidding credit of 15 percent, as specified in §1.2110(f)(2)(i) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

13. Amend § 27.1221 by revising paragraphs (b) through (e) and adding a new paragraph (f) to read as follows:

§ 27.1221 Interference protection.

(b) Height Benchmarking. Height benchmarking is defined for pairs of base stations, one in each of two proximate geographic service areas (GSAs). The height benchmark, which is defined in meters (hb_m) for a particular base station relative to a base station in another GSA, is equal to the distance, in kilometers, from the base station along a radial to the nearest point on the GSA boundary of the other base station squared (D_{km}^2) and then divided by 17. That is, $hb_m = D_{km}^2/17$. A base station antenna will be considered to be within its applicable height benchmark relative to another base station if the height in meters of its centerline of radiation above average elevation (HAAE) calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter does not exceed the height benchmark (hb_m). A base station antenna will be considered to exceed its applicable height benchmark relative to another base station if the HAAE of its centerline of radiation calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter exceeds the height benchmark (hb_m).

(c) Protection for Receiving Antennas Not Exceeding the Height Benchmark. Absent agreement between the two licensees to the contrary, if a transmitting antenna of one BRS/EBS licensee's base

station exceeds its applicable height benchmark and such licensee is notified by another BRS/EBS licensee that it is generating an undesired signal level in excess of -107 dBm/5.5 megahertz at the receiver of a co-channel base station that is within its applicable height benchmark, then the licensee of the base station that exceeds its applicable height benchmark shall either limit the undesired signal at the receiver of the protected base station to -107dBm/5.5 megahertz or less or reduce the height of its transmission antenna to no more than the height benchmark. If the interfering base station has been modified to increase the EIRP transmitted in the direction of the protected base station, it shall be deemed to have commenced operations on the date of such modification. Such corrective action shall be completed no later than:

(i) 24 hours after receiving such notification, if the base station that exceeds its height benchmark commenced operations after the station that is within its applicable height benchmark; or

(ii) 90 days after receiving such notification, if the base station that exceeds its height benchmark commenced operations prior to the station that is within its applicable height benchmark. For purposes of this section, if the interfering base station has been modified to increase the EIRP transmitted in the direction of the victim base station, it shall be deemed to have commenced operations on the date of such modification.

(d) No Protection from a Transmitting Antenna not Exceeding the Height Benchmark. The licensee of a base station transmitting antenna less than or equal to its applicable height benchmark shall not be required pursuant to paragraph (c) of this section to limit that antenna's undesired signal level to -107dBm/5.5 megahertz or less at the receiver of any co-channel base station.

(e) No Protection for a Receiving-Antenna Exceeding the Height Benchmark. The licensee of a base station receive antenna that exceeds its applicable height benchmark shall not be entitled pursuant to paragraph (c) of this section to insist that any co-channel base station limit its undesired signal level to -107dBm/5.5 megahertz or less at the receiver.

(f) Information Exchange. A BRS/EBS licensee shall provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its GSA within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in a proximate GSA. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

14. Amend § 27.1231 by revising paragraph (f) introductory text to read as follows:

§ 27.1231 Initiating the transition.

(f) Initiation Plan. To initiate a transition, a potential proponent(s) must submit an Initiation Plan to the Commission at the Office of the Secretary in Washington, DC on or before January 21, 2009.

15. Amend § 27.1236 by revising paragraphs (a), (b)(1), and (b)(6) to read as follows:

§ 27.1236 Self-transitions.

(a) If an Initiation Plan is not filed on or before January 21, 2009 for a BTA, BRS and EBS licensees in that BTA may self-transition by relocating to their default channel locations specified in § 27.5(i)(2) and complying with §§ 27.50(h), 27.53, 27.55 and 27.1221.

(b) ***

(1) Notify the Secretary of the Commission on or before April 21, 2009 that it will self-transition (see paragraph (a) of this section);

(6) Complete the self-transition on or before October 20, 2011.

APPENDIX B

Final Regulatory Flexibility Analysis

(For Fourth Memorandum Opinion and Order)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ we incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rule Making (FNPRM)*. Because we amend the rules in this *Fourth Memorandum Opinion and Order*, we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.²

Need for, and Objectives of the Rules:

In the *Fourth Memorandum Opinion and Order*, we continue to modify our rules to enable the transition of the 2.5 GHz band and the provision of new and innovative wireless services. Today, we adopt Part I, Subpart Q as the competitive bidding rules for available and unassigned Broadband Radio Service (BRS) spectrum; designate entity rules to provide bidding credits for small businesses, very small businesses, and entrepreneurs; modify technical rules concerning emission limits, signal strength limits, and height benchmarking; special safe harbors for licensees whose Geographic Service Area (GSA) is heavily encumbered or highly truncated; and create three Gulf of Mexico Service Area zones.

We believe the rules we adopt today will both encourage the enhancement of existing services using this band and promote the development of new innovative services to the public, such as providing wireless broadband services, including high-speed Internet access and mobile services. We also believe that our new rules will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than to government regulation, in determining how this band can best be used.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA:

No comments were submitted specifically in response to the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.³ The RFA generally defines the term "small entity" as having the same meaning as the terms, "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 604.

³ 5 U.S.C. § 603(b)(3).

⁴ 5 U.S.C. § 601(6).

"small business concern" under the Small Business Act.⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁶ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁷ Nationwide, as of 2002, there were approximately 1.6 million small organizations.⁸ The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁹ The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁰ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹¹ We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."¹² Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).¹³ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹⁴ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered

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

⁶ 15 U.S.C. § 632.

⁷ 5 U.S.C. § 601(4).

⁸ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

⁹ 5 U.S.C. § 601(5).

¹⁰ 5 U.S.C. § 601(5).

¹¹ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹² We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹³ 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*).

¹⁴ 47 C.F.R. § 21.961(b)(1).

small entities.¹⁵ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's Rules. Some of those 440 small business licensees may be affected by the decisions in this *Fourth Memorandum Opinion and Order*.

In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts.¹⁶ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹⁷ 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.¹⁸ Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.¹⁹ Thus, we estimate that at least 1,932 licensees are small businesses.

There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity.²⁰ EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1,932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

This *Fourth Memorandum Opinion and Order* modifies the reporting, recordkeeping, or other compliance requirements previously adopted in this proceeding. We are adopting competitive bidding procedures for available and unassigned BRS spectrum, including small business size standards and bidding credits for a "small business" (an entity with attributed average annual gross revenues not exceeding \$40 million for the preceding three years), a "very small business" (an entity with attributed average gross revenues not exceeding \$15 million for the preceding three years), and an "entrepreneur" (an entity with attributed average gross revenues not exceeding \$3 million the preceding three years).²¹ We are also adopting two new safe harbors to enable BRS and EBS licensees whose GSA is heavily encumbered or highly truncated to meet the performance requirements for the 2.5 GHz band.²² We are also creating three new Gulf of Mexico GSAs, which will enable the provision of 2.5 GHz band wireless services in the Gulf of

¹⁵ 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.

¹⁶ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁷ 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).

¹⁸ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁹ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

²⁰ See 5 U.S.C. §§ 601 (3)-(5).

²¹ See *supra* ¶¶ 26-28.

²² See *supra* ¶¶ 144-145.

Mexico in the future.²³ We are changing the technical rules concerning emission limits, signal strength limits, and antenna height benchmarking, including requiring licensees to exchange information.²⁴

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

The RFA requires an agency to describe any significant 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 such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."²⁵

Regarding our decision to adopt competitive bidding rules, we anticipate that our decision to adopt small business size standards and bidding credits for entities that meet the definition of small business, very small business, or entrepreneur will not have a significant economic impact on small entities. Because the BRS spectrum in the 2.5 GHz band was auctioned in 1996, only 70 BTA licenses (of the 493 licenses originally available in 1996) are available for reassignment by competitive bidding.

Regarding our decision to adopt two new safe harbors for the demonstration of substantial service compliance, we do not anticipate any significant economic impact on small entities. These two safe harbors apply only to licensees that have heavily encumbered or highly truncated GSAs. Although the applicability of these two safe harbors is limited, they will enable licensees to meet both our performance requirements and our interference protection rules.

Regarding our decision to adopt three new Gulf of Mexico Service Area Zones, we do not anticipate any significant impact on small entities. We anticipate that spectrum in these GSAs will be used on oil platforms in the Gulf of Mexico.

Regarding our decision to modify various technical rules, we do not anticipate any significant impact on small entities. These modifications are minor.

The rules set forth in the *Fourth Memorandum Opinion Order* will affect all entities that intend to provide BRS or EBS service in the 2.5 GHz band.

²³ See *supra* ¶¶ 122-129.

²⁴ See *supra* ¶¶ 48-84.

²⁵ See 5 U.S.C. § 603(c).

Report to Congress:

The Commission will send a copy of this *Fourth Memorandum Opinion Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁶ In addition, the Commission will send a copy of this *Fourth Memorandum Opinion Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Fourth Memorandum Opinion Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.²⁷

²⁶ See generally, 5 U.S.C. § 801 (a)(1)(A).

²⁷ See 5 U.S.C. § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

(For Second Further Notice of Proposed Rulemaking)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rule Making (2nd FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *2nd FNPRM* for comments. The Commission will send a copy of this *2nd FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *2nd FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

Need for, and Objectives of, the Proposed Rules:

The *2nd FNPRM* seeks comment on various alternatives to license unassigned and available EBS spectrum throughout the United States and the Gulf of Mexico. Specifically, the *2nd FNPRM* seeks comments on the following options:

- 1) Using competitive bidding to license unassigned and available spectrum.⁴ If this option is adopted the Commission proposes to use the competitive bidding rules in Part 1, Subpart Q of the Commission's Rules. The Commission also seeks comment on whether to adopt bidding credits and small business size standard; the size of the spectrum blocks to be auctioned, and the size of geographic areas to be licensed.
- 2) Issuing one license per State to a State agency designated by the Governor to act as a spectrum manager for the State.⁵ The State agency would be required to meet the eligibility restrictions in Section 27.1201 of the Commission's Rules. The State agency would be able use spectrum manager leasing arrangements or *de facto* transfer leasing arrangements.
- 3) Using a leasing scheme similar to the one used to license private land mobile radio spectrum.⁶ Under this approach, applicants could submit applications for new EBS stations at any time to frequency coordinators.

We believe our proposals will encourage utilization of this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services while encouraging educators to use the band for educational services.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ See *supra* ¶¶ 191-196.

⁵ See *supra* ¶¶ 197-201.

⁶ See *supra* ¶ 203.

Legal Basis:

The proposed action is authorized under Sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms, "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹¹ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹² The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹³ The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁴ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁵ We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."¹⁶ Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

The Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)) is used to provide educational services to students.¹⁷ The SBA has developed a small

⁷ 5 U.S.C. § 603(b)(3).

⁸ 5 U.S.C. § 601(6).

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

¹⁰ 15 U.S.C. § 632.

¹¹ 5 U.S.C. § 601(4).

¹² Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹³ 5 U.S.C. § 601(5).

¹⁴ 5 U.S.C. § 601(5).

¹⁵ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹⁶ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁷ 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

(continued....)

business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts.¹⁸ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹⁹ 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.²⁰ Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.²¹ Thus, we estimate that at least 1,932 licensees are small businesses.

There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity.²² EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1,932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

There are no new reporting, recordkeeping or other compliance requirements proposed in the 2nd FNPRM.

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

The RFA requires an agency to describe any significant 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 such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."²³

The Commission has not proposed an approach for licensing EBS spectrum. Instead, the Commission seeks comment on three distinct approaches for licensing EBS spectrum to determine which approach would best suit the needs of schools and universities and other non-profit educational institutions.

(...continued from previous page)

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*).

¹⁸ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁹ 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).

²⁰ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

²¹ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

²² See 5 U.S.C. §§ 601 (3)-(5).

²³ See 5 U.S.C. § 603(c).

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

None.

APPENDIX D

List of Petitioners to BRS/EBS 3rd MO&O**Petitions for Reconsideration**

Ad Hoc MDS Alliance

American Petroleum Institute (API)

BellSouth Corporation, BellSouth Wireless Cable, Inc., and South Florida Television, Inc. (joint) (Bell South)

Clarendon Foundation (Clarendon)

Hispanic Information and Telecommunications Network (HITN)

NextWave Broadband Inc. (NextWave)

NY3G Partnership (NY3G)

School Board of Broward County, Florida (Broward County)

Society of Broadcast Engineers (SBE)

Wireless Communications Association International, Inc. (WCA)

Oppositions to Petitions for Reconsideration

Ad Hoc MDS Alliance

BRS Rural Advocacy Group

Catholic Television Network/National ITFS Association (joint) (CTN NIA)

Clearwire Corporation (Clearwire)

Globalstar, Inc. (Globalstar)

Hispanic Information and Telecommunications Network

ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. (IMWED)

Line of Site, Inc. (LOSI)

School Board of Miami-Dade County, Florida (Miami-Dade)

Sprint Nextel Corporation (Sprint Nextel)

WiMAX Forum (WiMAX)

Wireless Communications Association International, Inc.

Reply to Oppositions to Petitions for Reconsideration

Ad Hoc MDS Alliance

American Petroleum Institute

BellSouth Corporation, BellSouth Wireless Cable, Inc., and South Florida Television, Inc. (joint)

Catholic Television Network/National ITFS Association (joint)

Hispanic Information and Telecommunications Network

ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.

NextWave Broadband Inc.

PetroCom License Corporation (PetroCom)

School Board of Broward County, Florida

Sprint Nextel Corporation

Wireless Communications Association International, Inc.

Ex Parte

American Petroleum Institute

Cantor Fitzgerald/eSpeed Inc.

Clearwire

CTN/NIA

Globalstar, Inc.

Hispanic Information and Telecommunications Network

Sprint Nextel

T-Mobile USA

Wireless Communications Association International, Inc.