

employment of 500 to 999.<sup>13</sup> Thus, under this size standard, the majority of firms can be considered small.

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

There are no specific reporting or recordkeeping requirements proposed in the *Notice*, other than the recordkeeping and coordination requirements discussed in Section A, *supra*.

**E. 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: (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) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>14</sup>

As stated in Section A, *supra*, the *Notice* specifically invites comments on two options for power and emission limits for WCS operations and SDARS repeaters, including a peak ground-level emission limit of -44 dBm, or an average EIRP limit of two kilowatts (kW) EIRP, with a 6 dB peak-to-average ratio. The *Notice* also invites interested parties to suggest alternative proposals.

At this time, the Commission has not excluded any alternative proposal concerning ground-level emission limits and average EIRP limits from its consideration, but it would do so in this proceeding if the record indicates that a particular proposal would have a significant and unjustifiable adverse economic impact on small entities.

However, the Commission has also invited interested parties to propose any other alternative form of coordination if it would be more efficient or effective. However, the Commission will not consider any alternative proposal that would have a significant and unjustifiable adverse economic impact on small entities.

In Section III.C. of the *Notice*, the Commission discusses record keeping and coordination proposals to ensure towers are deployed in a fashion to avoid interference. In particular, the Commission is considering a proposal to require licensees to provide notice to all licensed radio stations potentially affected by SDARS repeater and WCS station deployments. However, as noted *supra* in Section A, the Commission has also invited interested parties to propose any other alternative form of coordination if it would be more efficient or effective. However, the Commission will not consider any alternative that would have a significant and unjustifiable adverse economic impact on small entities.

In Section III.D. of the *Notice*, the Commission seeks comment on grandfathering and transition proposals for existing SDARS repeaters. One proposal is to grandfather all existing SDARS terrestrial repeaters, thereby exempting those repeaters from any out-of-band power limits adopted in this

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numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>13</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>14</sup> *See* 5 U.S.C. § 603(c).

rulemaking proceeding. Another is to require the operators of those repeaters to come into compliance with any such limits within a year from the adoption of such rules. The Commission invites comments on both of these grandfathering-related and transition-related proposals, and invites commenters to recommend other transition periods. The Commission solicits any alternative proposals that would not incur significant and unjustifiable adverse impact on small entities.

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

None.

## APPENDIX B

## INITIAL REGULATORY FLEXIBILITY ANALYSIS

*Second Further Notice of Proposed Rulemaking in IB Docket No. 95-91*

The Regulatory Flexibility Act (RFA)<sup>1</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>2</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

With respect to the DARS licensees, only two operators hold licenses to provide SDARS service, XM and Sirius. Both of these licensees are dominant in their field and neither qualify as small entities. SDARS provides nationally distributed subscription radio service, which requires a great investment of capital for operation. Because SDARS service requires significant capital, we believe it is unlikely that a small entity as defined by the Small Business Administration would have the financial wherewithal to become an SDARS licensee.<sup>6</sup>

Commission therefore certifies, pursuant to the RFA, that the proposals in this *Second Further Notice* in IB Docket No. 95-91, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the *Notice* require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the *Notice*, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the *Notice* and this initial certification will be published in the Federal Register.<sup>7</sup>

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<sup>1</sup> 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, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 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."

<sup>5</sup> 15 U.S.C. § 632.

<sup>6</sup> The small business size standard for the census category, "Radio Networks," which includes radio satellite broadcasting is \$6.5 million or less in receipts, per year. See 13 C.F.R. § 121.201, NAICS code 515111.

<sup>7</sup> See 5 U.S.C. § 605(b).