

**Part 78 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:**

**PART 78—CABLE TELEVISION RELAY SERVICE**

18. The authority citation for Part 78 continues to read as follows:

AUTHORITY: 47 U.S.C. Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

19. Section 78.40 is revised as follows:

**§ 78.40 Transition of the 1990-2025 MHz band from the Cable Television Relay Service to Emerging Technologies.**

(a) New Entrants are collectively defined as those licensees proposing to use emerging technologies to implement Mobile Satellite Services in the 2000-2020 MHz band (MSS licensees), those licensees authorized after July 1, 2004 to implement new Fixed and Mobile services in the 1990-1995 MHz band, and those licensees authorized after September 9, 2004 in the 1995-2000 MHz and 2020-2025 MHz bands. New entrants may negotiate with Cable Television Relay Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990-2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025-2110 MHz band, to other authorized bands, or to other media; or, alternatively, would accept a sharing arrangement with the New Entrants that may result in an otherwise impermissible level of interference to the Existing Licensee's operations. New Entrants in the 2020-2025 MHz band are subject to the specific relocation procedures adopted in WT Docket 04-356.

(b) Existing Licensees in the 1990-2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until a New Entrant completes relocation of the Existing Licensee's operations, Existing Licensee indicates to a New Entrant that it declines to be relocated, become secondary under the terms of paragraphs (f)(6) or (g)(1)(a) of this section.

(c) The Commission will amend the operating license of the Existing Licensee to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Cable Television Relay Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If, within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defect.

(f) Subject to the terms of this paragraph (f), the relocation of Existing Licensees will be carried out by MSS licensees in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this part. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1-30, as such DMAs existed on September 6, 2000, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as "mandatory negotiations," as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees after December 8, 2004.

(ii) [Reserved]

(iii) On the date that the first MSS licensee begins operations in the 2000- 2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in DMAs 31-210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntarily relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (f), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025-2110 MHz band using the channel plan specified in § 78.18(a)(6)(i) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 78.18(a)(6)(ii). All negotiations must produce solutions that adhere to the market area's band plan.

(3) [Reserved]

(4) [Reserved]

(5) As of the date the first MSS Licensee begins operations in the 1990-2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31-100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990-2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease operations in the 1990-2025 MHz band within six months.

(g) The 1995-2000 MHz band is allocated for Advanced Wireless Services (AWS). AWS licensees in this band are New Entrants as defined in paragraph (a) of this section and therefore must comply with sections (a), (b), (c), (d), (e) and (g) of this section to the extent AWS entrants seek to relocate Broadcast Auxiliary Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990-2025 MHz band (Existing Licensees).

(1) AWS licensees are required to protect previously Existing Licensees in this band from interference.

(a) An AWS licensee may not begin operations in a specific Nielsen Designated Market Area (DMA) until all incumbent operations in that DMA have been either (1) relocated by an MSS licensee, an AWS entrant, or another licensee; or (2) discontinued pursuant to the terms of paragraph (a) of this

section. If Existing Licensees remain in the band after December 9, 2013, they must cease operations *within six months of receiving a written demand from either an MSS licensee or an AWS licensee.*

(b) An AWS licensee in this band is required conform to the technical criteria specified in TIA Bulletin TSB 10-F, or procedures other than TSB 10-F that follow generally acceptable good engineering practices pursuant to § 101.105(c) of this chapter, to determine whether its operations in the 1995-2000 MHz band would cause interference to the operations of Existing Licensees in the 1990-2025 MHz band. To the extent that the TSB 10-F demonstrates that an AWS licensee may cause interference to Existing Licensees in an adjacent DMA, the AWS licensee must either relocate the Existing Licensees or revise its proposed operations to ensure, in accordance with the technical criteria in the TSB 10-F, that its revised operations will not cause interference to Existing Licensees in adjacent DMAs.

(2) If a specific DMA has not yet been cleared and an AWS licensee seeks to begin operations in the specific DMA, an AWS licensee may negotiate with an Existing Licensee for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to one of the channel plans specified in § 74.602(a)(3) of this chapter, to other authorized bands, or to other media; or, alternatively, would discontinue use of the 1990-2025 MHz band. An AWS licensee may negotiate individually or collectively for relocation of Existing Licensees, but the AWS licensee is required to coordinate its anticipated clearance schedule with other New Entrants. New entrants are expected to work cooperatively with all interested parties to avoid duplicative efforts and undue delay in the negotiation and transition process. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated. The good faith provisions set-forth in § 101.73 of this chapter apply throughout the negotiation and relocation process.

(3) If a mandatory negotiation period for or an involuntary relocation of Existing Licensees in a particular DMA has already been triggered pursuant to paragraph (e) of this section or pursuant to provisions set-forth elsewhere in this chapter or by order in WT Docket 02-55, ET Docket 00-258, or ET Docket 95-18, an AWS licensee seeking to operate in that particular DMA will not trigger a new negotiation or involuntary relocation schedule pursuant to this section. If such has not occurred with respect to a specific DMA, the following shall apply to AWS licensees at 1995-2000 MHz:

(a) Existing Licensees in DMAs 1-30, as such DMAs existed on September 6, 2000, are subject to involuntary relocation. Under involuntary relocation, the Existing Licensees are required to relocate providing that the New Entrant complies with the requirements set-forth in paragraph (c) of this section and furnishes Existing Licensees with comparable facilities, as defined in § 101.75 (b) of this chapter.

(b) For the remaining DMAs, as such DMAs existed on September 6, 2000, a one-year mandatory negotiation period will commence between Existing Licensees and New Entrants (if such has not already occurred or been triggered) when an AWS licensee approaches any Existing Licensee operating in the specific DMA. Mandatory negotiations shall be conducted in accordance with the good faith provisions set-forth in § 101.73 of this chapter with the goal of providing the Existing Licensees with comparable facilities, as defined in § 101.73(d)(1)-(3) of this chapter. After the end of the mandatory negotiation period, an AWS licensee may involuntarily relocate any Existing Licensees with which they have been unable to reach a negotiated agreement.

(c) To the extent the Commission adopts an earlier transition date to relocate Existing Licensees in a specific DMA in WT Docket 02-55, ET Docket 00-258, or ET Docket 95-18, AWS licensees and Existing Licensees shall comply with the requirements set-forth and adopted in those proceedings

**Part 101 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:**

**PART 101—FIXED MICROWAVE SERVICES**

20. The authority citation for Part 101 continues to read as follows:

**AUTHORITY:** 47 U.S.C. Secs. 154, 303.

**Policies Governing Microwave Relocation From the 1850–1990 and 2110–2200 MHz Bands**

21. Paragraph (f) of Section 101.69 is revised to read as follows:

**§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.**

Fixed Microwave Services (FMS) in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS), Advanced Wireless Services (AWS), and Mobile Satellite Services (MSS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would:

- (1) Relocate their operations to other fixed microwave bands or other media; or alternatively
- (2) Accept a sharing arrangement with the ET licensee that may result in an otherwise impermissible level of interference to the FMS operations.

(b)—(c) [Reserved]

(d) Relocation of FMS licensees in the 2110–2150 and 2160–2200 MHz band will be subject to mandatory negotiations only. Except as provided in paragraph (e) of this section, mandatory negotiation periods are defined as follows:

- (1) Non-public safety incumbents will have a two-year mandatory negotiation period; and
- (2) Public safety incumbents will have a three-year mandatory negotiation period.

(e) Relocation of FMS licensees by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods that are triggered in the first instance by MSS/ATC licensees are defined as follows:

- (1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004.
- (2) The mandatory negotiation period for public safety incumbents will end December 8, 2005.

(f) AWS licensees operating in the 1915–1920 MHz band will follow the requirements and procedures set forth in ET Docket No. 00–258 and WT Docket No. 04–356.

(g) If no agreement is reached during the mandatory negotiation period, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of §101.75.

22. Section 101.79(a)(1) is revised to read as follows:

**§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.**

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee (including MSS/ATC operator) requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset. Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10-F (for terrestrial-to-terrestrial situations) or TIA TSB 86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis. The date that the relocation rules sunset is determined as follows:

(1) For the 2110–2150 MHz and 2160–2180 MHz bands, ten years after the first ET license is issued in the respective band; and

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**APPENDIX B****Supplemental Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>10</sup> the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in this *Further Notice of Proposed Rulemaking (Further Notice)*. Initial Regulatory Flexibility Analyses were included in the *AWS-2 NPRM*<sup>11</sup> and the *AWS-3 NPRM*.<sup>12</sup> Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>13</sup> In addition, the *Further Notice* and Supplemental IRFA (or summaries thereof) will be published in the Federal Register.<sup>14</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The *Further Notice* contemplates service rules for licensed fixed and mobile services, including advanced wireless services (AWS), in the 1915-1920 MHz and 1995-2000 MHz bands (collectively the "H Block") and the 2155-2175 MHz and 2175-2180 MHz bands (collectively the "AWS-3 band").<sup>15</sup> These service rules include application, licensing, operating and technical rules for the AWS-3 band and H Block.<sup>16</sup> Consistent with the Commission's policy objective of affording licensees the flexibility to deploy new technologies, to implement service innovations, and to respond to market forces, the *Further Notice* proposes service rules that provide AWS-3 and H Block licensees with the flexibility to provide any fixed or mobile service, including advanced wireless services, which is consistent with the allocations for this spectrum. The market-oriented licensing framework for these bands would ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of broadband services, ultimately leading to greater benefits to consumers.

3. The *Further Notice* seeks to adopt rules that will reduce regulatory burdens, promote innovative services, and encourage flexible use of this spectrum. Such an approach opens up economic opportunities to a variety of spectrum users, which could include small businesses.

4. The *Further Notice* proposes combining the 2155-2175 MHz band with the 2175-2180 MHz band to form a 25 MHz block of spectrum.<sup>17</sup>

<sup>10</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, Title II, 110 Stat. 857 (1996).

<sup>11</sup> Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 04-356, WT Docket No. 02-353, *Notice of Proposed Rulemaking*, 19 FCC Rcd 19263 (2004) (*AWS-2 NPRM*).

<sup>12</sup> Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band, WT Docket No. 07-195, *Notice of Proposed Rulemaking*, 22 FCC Rcd 17035 (2007) (*AWS-3 NPRM*).

<sup>13</sup> See 5 U.S.C. § 603(a).

<sup>14</sup> See 5 U.S.C. § 603(a).

<sup>15</sup> See *Further Notice* at ¶ 1.

<sup>16</sup> See *Further Notice* at ¶ 3-4.

<sup>17</sup> See *Further Notice* at ¶ 3.

5. In the *Further Notice*, the Commission also seeks comments on its proposal to permit both downlink and uplink transmissions throughout the entire AWS-3 band.<sup>18</sup>

6. In the *Further Notice*, the Commission also seeks comments on its proposal to require an AWS-3 licensee to provide free, two-way broadband Internet service that includes engineered data rates of at least 768 kps downstream for the average user experience using up to 25 percent of the licensee's wireless network capacity and an "always on" network-based filtering mechanism.<sup>19</sup>

7. In the *Further Notice*, the Commission seeks comments on its proposal to require the licensee to provide for open devices and open applications for its premium service and open devices for its free service.<sup>20</sup>

8. In the *Further Notice*, the Commission seeks comments on its proposal to adopt a single nationwide license for the 2155-2180 MHz band.<sup>21</sup>

9. In the *Further Notice*, the Commission seeks comments on its proposal to adopt open eligibility for the AWS-3 band.<sup>22</sup>

10. In the *Further Notice*, the Commission seeks comments on its proposal to allow licensees to disaggregate, partition, and lease the spectrum.<sup>23</sup>

11. In the *Further Notice*, the Commission seeks comments on its proposal to require AWS-3 licensees to provide signal coverage and offer service to: 1) at least 50 percent of the total population of the nation within four years of commencement of the license term and 2) at least 95 percent of the total population of the nation at the end of the 10-year license term.<sup>24</sup>

12. In the *Further Notice*, the Commission seeks comments on its proposal to provide initial license term of ten years and subsequent renewal terms of ten years.<sup>25</sup>

13. In the *Further Notice*, the Commission seeks comments on its proposal to provide that mutually exclusive applications should be resolved through competitive bidding.<sup>26</sup>

14. In the *Further Notice*, the Commission seeks comments on its proposal to require AWS-3 mobiles to attenuate out-of-band emissions (OOBE) by  $60 + 10\log(P)$  dB outside of the AWS-3 band, and establish a power limit for AWS-3 mobile devices of 23 dBm/MHz equivalent isotropically radiated power (EIRP).<sup>27</sup>

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<sup>18</sup> See *Further Notice* at ¶ 3.

<sup>19</sup> See *Further Notice* at ¶ 3.

<sup>20</sup> See *Further Notice* at ¶ 3.

<sup>21</sup> See *Further Notice* at ¶ 3.

<sup>22</sup> See *Further Notice* at ¶ 3.

<sup>23</sup> See *Further Notice* at ¶ 3.

<sup>24</sup> See *Further Notice* at ¶ 3.

<sup>25</sup> See *Further Notice* at ¶ 3.

<sup>26</sup> See *Further Notice* at ¶ 3.

<sup>27</sup> See *Further Notice* at ¶ 3.

15. In the *Further Notice*, the Commission seeks comments on its proposal to require an ODBE limit of  $43 + 10 \log (P)$  dB for AWS-3 base and fixed downlink stations and a power limit of 1640 watts peak EIRP in non-rural areas and 3280 watts peak EIRP in rural areas.<sup>28</sup>

16. In the *Further Notice*, the Commission seeks comments on its proposal to license the H Block using exclusive geographic area licensing on a Basic Trading Area (BTA) basis.<sup>29</sup>

17. In the *Further Notice*, the Commission seeks comments on its proposal to adopt open eligibility for the H Block.<sup>30</sup>

18. In the *Further Notice*, the Commission seeks comments on its proposal to allow licensees to disaggregate, partition, and lease the spectrum.<sup>31</sup>

19. In the *Further Notice*, the Commission seeks comments on its proposal to require an H Block licensee to provide signal coverage and offer service to: 1) at least 35 percent of the population in each licensed area within four years and 2) at least 70 percent of the population in each licensed area at the end of the license term.<sup>32</sup>

20. In the *Further Notice*, the Commission seeks comments on its proposal to provide an initial license term of ten years and subsequent renewal terms of ten years.<sup>33</sup>

21. In the *Further Notice*, the Commission seeks comments on its proposal to provide that mutually exclusive applications should be resolved through competitive bidding.<sup>34</sup>

22. In the *Further Notice*, the Commission seeks comments on its proposal to require H Block licensees in the 1915-1920 MHz band to pay a *pro rata* share of expenses previously incurred by UTAM Inc. in clearing that band.<sup>35</sup>

23. In the *Further Notice*, the Commission seeks comments on its proposal to adopt both relocation requirements for H Block entrants in the 1995-2000 MHz band and procedures for cost-sharing among other new entrants in the Broadcast Auxiliary Service band, including Sprint Nextel and Mobile Satellite Service entrants.<sup>36</sup>

24. In the *Further Notice*, the Commission seeks comments on its proposal to prohibit base and fixed transmission in the 1915-1920 MHz band.<sup>37</sup>

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<sup>28</sup> See *Further Notice* at ¶ 3.

<sup>29</sup> See *Further Notice* at ¶ 4.

<sup>30</sup> See *Further Notice* at ¶ 4.

<sup>31</sup> See *Further Notice* at ¶ 4.

<sup>32</sup> See *Further Notice* at ¶ 4.

<sup>33</sup> See *Further Notice* at ¶ 4.

<sup>34</sup> See *Further Notice* at ¶ 4.

<sup>35</sup> See *Further Notice* at ¶ 4.

<sup>36</sup> See *Further Notice* at ¶ 4.

<sup>37</sup> See *Further Notice* at ¶ 4.

25. In the *Further Notice*, the Commission seeks comments on its proposal to require mobiles at 1915-1920 MHz to attenuate OOB by  $90 + 10 \log P$  dB within the PCS band (1930-1990 MHz band), and establish a power limit for mobiles of 23 dBm/MHz EIRP.<sup>38</sup>

26. In the *Further Notice*, the Commission seeks comments on its proposal to prohibit mobile transmission in the 1995-2000 MHz band.<sup>39</sup>

27. In the *Further Notice*, the Commission seeks comments on its proposal to adopt an OOB limit of  $43 + 10 \log (P)$  dB for base and fixed stations at 1995-2000 MHz and a power limit of 1640 watts peak EIRP in non-rural areas and 3280 watts peak EIRP in rural areas.<sup>40</sup>

28. Our actions today bring us closer to our goals of achieving the universal availability of broadband access and increasing competition in the provision of such broadband services both in terms of the types of services offered and in the technologies utilized to provide those services. The widespread deployment of broadband will bring new services to consumers, stimulate economic activity, improve national productivity, and advance many other objectives – such as improving education, and advancing economic opportunity for more Americans. By encouraging the growth and development of broadband, our actions today also foster the development of facilities-based competition. We achieve these objectives by taking a market-oriented approach to licensing this spectrum that provides greater certainty, minimal regulatory intervention, and leads to greater benefits to consumers.

#### **B. Legal Basis**

29. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 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.

#### **C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

30. 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, if adopted.<sup>41</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>42</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>43</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>44</sup>

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<sup>38</sup> See *Further Notice* at ¶ 4.

<sup>39</sup> See *Further Notice* at ¶ 4.

<sup>40</sup> See *Further Notice* at ¶ 4.

<sup>41</sup> 5 U.S.C. § 603(b)(3).

<sup>42</sup> 5 U.S.C. § 601(6).

<sup>43</sup> 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.”

<sup>44</sup> 15 U.S.C. § 632.

31. The Commission has not yet determined how many licenses will be awarded in the 1915-1920 MHz, 1995-2000 MHz, and 2155-2180 MHz bands. Moreover, the Commission does not yet know how many applicants or licensees in these bands will be small entities. Though the Commission does not know for certain which entities are likely to apply for these frequencies, we note that the H Block and AWS-3 band are comparable to cellular service and personal communications service.<sup>45</sup> Accordingly, we believe the following sorts of regulated entities might ultimately also be applicants or licensees in this context and thus might be directly affected by our contemplated rules.

32. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>46</sup>

33. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.<sup>47</sup>

34. *Small Governmental Jurisdictions.* 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.”<sup>48</sup> As of 2002, there were approximately 87,525 governmental jurisdictions in the United States.<sup>49</sup> This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer.

35. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>50</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>51</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>52</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>53</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>54</sup> For the category of Cellular and Other Wireless

<sup>45</sup> See, e.g., *AWS-2 Service Rules NPRM*; *AWS-3 Service Rules NPRM*.

<sup>46</sup> See SBA, *Programs and Services*, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>47</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>48</sup> 5 U.S.C. § 601(5).

<sup>49</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, pages 272-273, Tables 415 and 417.

<sup>50</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>51</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>53</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>54</sup> *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.”

Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>55</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>56</sup> Thus, we estimate that the majority of wireless firms are small.

36. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted above, the SBA has developed a small business size standard for "Wireless Telecommunications Carriers (except Satellite)" services.<sup>57</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>58</sup> According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.<sup>59</sup> We have estimated that 221 of these are small under the SBA small business size standard.

37. Broadband Personal Communications Service. The broadband personal communications services (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.<sup>60</sup> 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.<sup>61</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>62</sup> 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.<sup>63</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>64</sup>

38. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very

<sup>55</sup> 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).

<sup>56</sup> *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."

<sup>57</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>58</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>59</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (Feb. 2007). This source uses data that are current as of October 2005.

<sup>60</sup> 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, paras. 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>61</sup> 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, para. 60.

<sup>62</sup> 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.

<sup>63</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

<sup>64</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

small” businesses.<sup>65</sup> Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

39. *Cellular Licensees.* As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census category “Wireless Telecommunications Carriers (except Satellite).”<sup>66</sup> Under this category, a wireless business is small if it has 1,500 or fewer employees. Also, as noted, using Commission data we have estimated that most of these entities are small.

#### **D. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements**

40. The projected reporting, recordkeeping, and other compliance requirements resulting from the *Further Notice* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum.

41. Applicants for AWS licenses in the H Block and AWS-3 band will be required to file license applications using the Commission’s automated Universal Licensing System (ULS). ULS is an online electronic filing system that also serves as a powerful information tool that enables potential licensees to research applications, licenses, and antennae structures. It also keeps the public informed with weekly public notices, FCC rulemakings, processing utilities, and a telecommunications glossary. Applicants will be required to submit short-form auction applications using FCC Form 175.<sup>67</sup> In addition, winning bidders must submit long-form license applications through ULS using Form 601,<sup>68</sup> FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms.<sup>69</sup>

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

42. 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 and 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 such small entities.”<sup>70</sup>

43. Here, we propose service rules that are efficient and also fair to all entities, including small entities. We also note that, specifically to assist small businesses, the associated *AWS-2 NPRM* and the *AWS-3 NPRM* propose to establish small business size standards and associated small business bidding

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<sup>65</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>66</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>67</sup> See generally 47 C.F.R. § 1.2105.

<sup>68</sup> 47 C.F.R. § 1.913(a)(1).

<sup>69</sup> 47 C.F.R. § 1.2107.

<sup>70</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

credits for the 1915-1920 MHz, 1995-2000 MHz, 2155-2175 MHz, and 2175-2180 MHz bands.<sup>71</sup> The *AWS-2 NPRM* and the *AWS-3 NPRM* propose to define 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, if licenses are not nationwide.<sup>72</sup> The *AWS-2 NPRM* and the *AWS-3 NPRM* propose a bidding credit of 15 percent for small businesses and a bidding credit of 25 percent for very small businesses under certain circumstances.<sup>73</sup>

44. The *AWS-2 NPRM* and the *AWS-3 NPRM* also solicit comment on a number of proposals and alternatives regarding the service rules for the 1915-1920 MHz, 1995-2000 MHz, 2155-2175 MHz, and 2175-2180 MHz bands.<sup>74</sup> The *AWS-2 NPRM* and the *AWS-3 NPRM* seek to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, which could include small businesses. The *AWS-2 NPRM* and the *AWS-3 NPRM* consider various proposals and alternatives partly because the Commission seeks to minimize, to the extent possible, the economic impact on small businesses.<sup>75</sup>

45. The *AWS-2 NPRM* and the *AWS-3 NPRM* invite comment on various alternative licensing and service rules and on a number of issues relating to how the Commission should craft service rules for this spectrum, which could have an impact on small entities. For example, the Commission seeks comment on the licensing approach for these frequencies and how the size of spectrum blocks would impact small entities.<sup>76</sup> The *AWS-2 NPRM* and the *AWS-3 NPRM* seek proposals for a geographic area approach to geographic areas as opposed to a station-defined licensing approach.<sup>77</sup>

46. The regulatory burdens proposed in the *AWS-2 NPRM* and the *AWS-3 NPRM*, such as filing applications on appropriate forms, appear necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the *AWS-2 NPRM* and the *AWS-3 NPRM* will impact small entities, including small businesses and small government entities.

47. In addition, we seek comment on proposed rules that would permit licensees, including small entity licensees, to disaggregate, partition, and lease the spectrum. These options are helpful to small entities, and we seek comment on these proposals.

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

48. None.

<sup>71</sup> See *AWS-2 NPRM*, 19 FCC Rcd at 19307-10 ¶ 119-124; *AWS-3 NPRM*, 22 FCC Rcd at 17096-98 ¶ 150-54.

<sup>72</sup> *AWS-2 NPRM*, 19 FCC Rcd at 19308-09 ¶ 122; *AWS-3 NPRM*, 22 FCC Rcd at 17097 ¶ 152.

<sup>73</sup> *AWS-2 NPRM*, 19 FCC Rcd at 19309-10 ¶ 123-24; *AWS-3 NPRM*, 22 FCC Rcd at 17097-98 ¶ 153-54.

<sup>74</sup> See generally *AWS-2 NPRM*; *AWS-3 NPRM*.

<sup>75</sup> *AWS-2 NPRM*, 19 FCC Rcd at 19325-26 ¶ 26-31; *AWS-3 NPRM*, 22 FCC Rcd at 17106-08 ¶ 21-25.

<sup>76</sup> See *AWS-2 NPRM*, 19 FCC Rcd at 19272-77 ¶ 21-31; *AWS-3 NPRM*, 22 FCC Rcd at 17106-08 ¶ 34-38.

<sup>77</sup> See *AWS-2 NPRM*, 19 FCC Rcd at 19271-72 ¶ 18-20; *AWS-3 NPRM*, 22 FCC Rcd at 17050-51 ¶ 31-33.