

be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.¹²³ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹²⁴ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

80. **Common Carrier Paging.** As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of “Cellular and Other Wireless Telecommunications.”¹²⁵ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.¹²⁶ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.¹²⁷ Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

81. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹²⁸ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹²⁹ The SBA has approved this definition.¹³⁰ An auction of Metropolitan Economic Area (“MEA”) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.¹³¹ Fifty-seven companies claiming small business status won 440 licenses.¹³² An auction of MEA and Economic Area (“EA”) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.¹³³ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction,

¹²³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212.

¹²⁴ *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.”

¹²⁵ 13 C.F.R. § 121.201, NAICS code 517212.

¹²⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321.

¹²⁷ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321. 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 “Firms with 1000 employees or more.”

¹²⁸ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Second Report and Order*, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085-10088, ¶¶ 98-107 (1999).

¹²⁹ *Paging Second Report and Order*, 12 FCC Rcd at 2811, ¶ 179.

¹³⁰ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

¹³¹ See “*929 and 931 MHz Paging Auction Closes*,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

¹³² See *id.*

¹³³ See “*Lower and Upper Paging Band Auction Closes*,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.¹³⁴

82. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.¹³⁵ Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.¹³⁶ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

83. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹³⁷ The SBA has approved these definitions.¹³⁸ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

84. **1670-1675 MHz Services.** An auction for one license in the 1670-1675 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

85. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.¹³⁹ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁴⁰ According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.¹⁴¹ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.¹⁴² We have estimated that 222 of these are small under the SBA small business size standard.

86. **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

¹³⁴ See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003).

¹³⁵ “Trends in Telephone Service” at Table 5.3.

¹³⁶ “Trends in Telephone Service” at Table 5.3.

¹³⁷ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

¹³⁸ See *Alvarez Letter 1998*.

¹³⁹ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁴⁰ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁴¹ “Trends in Telephone Service” at Table 5.3.

¹⁴² “Trends in Telephone Service” at Table 5.3.

the three previous calendar years.¹⁴³ 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.¹⁴⁴ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.¹⁴⁵ 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.¹⁴⁶ On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.¹⁴⁷

87. 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 small” businesses.¹⁴⁸ 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. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses.¹⁴⁹ Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.¹⁵⁰ Of the 14 winning bidders, six were designated entities.¹⁵¹

88. **Narrowband Personal Communications Services.** The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.¹⁵² Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.¹⁵³ To ensure meaningful

¹⁴³ 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) (“*PCS Report and Order*”); see also 47 C.F.R. § 24.720(b).

¹⁴⁴ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

¹⁴⁵ See *Alvarez Letter 1998*.

¹⁴⁶ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

¹⁴⁷ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

¹⁴⁸ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

¹⁴⁹ See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

¹⁵⁰ See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

¹⁵¹ *Id.*

¹⁵² *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

¹⁵³ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.¹⁵⁴ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.¹⁵⁵ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.¹⁵⁶ The SBA has approved these small business size standards.¹⁵⁷ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.¹⁵⁸ Three of these claimed status as a small or very small entity and won 311 licenses.

89. **Lower 700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹⁵⁹ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁶⁰ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁶¹ Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses. The third category is “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹⁶² The SBA approved these small size standards.¹⁶³ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.¹⁶⁴ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.¹⁶⁵ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹⁶⁶ On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700

¹⁵⁴ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000) (“*Narrowband PCS Second Report and Order*”).

¹⁵⁵ *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

¹⁵⁶ *Id.*

¹⁵⁷ *See Alvarez Letter 1998*.

¹⁵⁸ *See “Narrowband PCS Auction Closes,” Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

¹⁵⁹ *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Report and Order*, 17 FCC Rcd 1022 (2002) (“*Channels 52-59 Report and Order*”).

¹⁶⁰ *See Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, ¶ 172.

¹⁶¹ *See id.*

¹⁶² *See id.*, 17 FCC Rcd at 1088, ¶ 173.

¹⁶³ *See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“Alvarez Letter 1999”).*

¹⁶⁴ *See “Lower 700 MHz Band Auction Closes,” Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

¹⁶⁵ *See “Lower 700 MHz Band Auction Closes,” Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

¹⁶⁶ *See id.*

MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

90. The Commission recently reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹⁶⁷ An auction of 700 MHz licenses commenced January 24, 2008. For the Lower 700 MHz band, 176 licenses over Economic Areas in the A Block, 734 licenses over Cellular Market Areas in the B Block, and 176 licenses over EAs in the E Block are available for licensing.¹⁶⁸ Winning bidders may be eligible for small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years), or very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

91. **Upper 700 MHz Band Licenses.** In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band are available for licensing: 12 licenses over Regional Economic Area Groupings (“REAGs”) in the C Block, and one nationwide license in the D Block.¹⁶⁹ Winning bidders may be eligible for small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years), or very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

92. **700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁷⁰ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁷¹ Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁷² SBA approval of these definitions is not required.¹⁷³ An auction of 52 Major Economic Area (“MEA”) licenses commenced on

¹⁶⁷ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Second Report and Order*, FCC 07-132 (2007) (“*700 MHz Second Report and Order*”).

¹⁶⁸ See “Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,” *Public Notice*, FCC Rcd 15004 (WTB 2007).

¹⁶⁹ See *id.*

¹⁷⁰ See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, *Second Report and Order*, 15 FCC Rcd 5299 (2000) (“*746-764 MHz Band Second Report and Order*”).

¹⁷¹ See *746-764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

¹⁷² See *id.*

¹⁷³ See *id.*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

September 6, 2000, and closed on September 21, 2000.¹⁷⁴ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁷⁵

93. **Specialized Mobile Radio.** The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.¹⁷⁶ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.¹⁷⁷ The SBA has approved these small business size standards for the 900 MHz Service.¹⁷⁸ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.¹⁷⁹ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.¹⁸⁰

94. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.¹⁸¹ In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹⁸² Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

95. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One

¹⁷⁴ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

¹⁷⁵ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹⁷⁶ 47 C.F.R. § 90.814(b)(1).

¹⁷⁷ 47 C.F.R. § 90.814(b)(1).

¹⁷⁸ See *Alvarez Letter 1999*.

¹⁷⁹ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

¹⁸⁰ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

¹⁸¹ See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (2000).

¹⁸² See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

96. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.¹⁸³ The Commission estimates that most such licensees are small businesses under the SBA’s small business standard.

97. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁸⁴ This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁸⁵ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁸⁶ The SBA has approved these small size standards.¹⁸⁷ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹⁸⁸ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (“EAG”) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.¹⁸⁹ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.¹⁹⁰ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.¹⁹¹ The Commission conducted a fourth auction in 2007 with three of the five winning bidders claiming small or very small business status.¹⁹²

¹⁸³ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁸⁴ *Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

¹⁸⁵ *Id.* at 11068, para. 291.

¹⁸⁶ *Id.*

¹⁸⁷ See Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (“*Alvarez to Phythyon Letter 1998*”).

¹⁸⁸ See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (1998).

¹⁸⁹ See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (1999).

¹⁹⁰ See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (1999).

¹⁹¹ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (2002).

¹⁹² See “Auction of Phase II 220 MHz Service Spectrum Licenses Closes,” *Public Notice*, 22 FCC Rcd 11573 (WTB 2007).

98. **Private Land Mobile Radio ("PLMR").** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹⁹³ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.¹⁹⁴

99. The Commission's 1994 Annual Report on PLMRs¹⁹⁵ indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that the revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

100. **Fixed Microwave Services.** Fixed microwave services include common carrier,¹⁹⁶ private operational-fixed,¹⁹⁷ and broadcast auxiliary radio services.¹⁹⁸ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.¹⁹⁹ The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

¹⁹³ See 13 C.F.R. § 121.201, NAICS code 517212.

¹⁹⁴ See generally 13 C.F.R. § 121.201.

¹⁹⁵ Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at ¶ 116.

¹⁹⁶ See 47 C.F.R. §§ 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁹⁷ Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹⁹⁸ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

¹⁹⁹ 13 C.F.R. § 121.201, NAICS code 517212.

101. **39 GHz Service.** The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.²⁰⁰ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁰¹ The SBA has approved these small business size standards.²⁰² The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

102. **Local Multipoint Distribution Service.** Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.²⁰³ The auction of the 986 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.²⁰⁴ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁰⁵ The SBA has approved these small business size standards in the context of LMDS auctions.²⁰⁶ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

103. **218-219 MHz Service.** The first auction of 218-219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).²⁰⁷ Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.²⁰⁸ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15

²⁰⁰ See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order, 12 FCC Rcd 18600 (1997).

²⁰¹ *Id.*

²⁰² See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); See Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

²⁰³ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, ¶ 348 (1997) (“*LMDS Second Report and Order*”).

²⁰⁴ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, ¶ 348.

²⁰⁵ See *id.*

²⁰⁶ See *Alvarez to Phythyon Letter 1998*.

²⁰⁷ See “*Interactive Video and Data Service (IVDS) Applications Accepted for Filing*,” Public Notice, 9 FCC Rcd 6227 (1994).

²⁰⁸ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

million for the preceding three years.²⁰⁹ A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.²¹⁰ The SBA has approved of these definitions.²¹¹ A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

104. Location and Monitoring Service (“LMS”). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.²¹² A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.²¹³ These definitions have been approved by the SBA.²¹⁴ An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

105. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.²¹⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).²¹⁶ In the present context, we will use the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.²¹⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

106. Air-Ground Radiotelephone Service.²¹⁸ The Commission has previously used the SBA’s small business definition applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.²¹⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service

²⁰⁹ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

²¹⁰ *Id.*

²¹¹ *See Alvarez to Phythyon Letter 1998.*

²¹² *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192, ¶ 20 (1998) (“*Automatic Vehicle Monitoring Systems Second Report and Order*”); *see also* 47 C.F.R. § 90.1103.

²¹³ *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; *see also* 47 C.F.R. § 90.1103.

²¹⁴ *See Alvarez Letter 1998.*

²¹⁵ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

²¹⁶ BETRS is defined in §§ 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

²¹⁷ 13 C.F.R. § 121.201, NAICS code 517212.

²¹⁸ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

²¹⁹ 13 C.F.R. § 121.201, NAICS codes 517212.

licenses through competitive bidding, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.²²⁰ A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.²²¹ These definitions were approved by the SBA.²²² In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

107. **Aviation and Marine Radio Services.** There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.²²³ The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.²²⁴ We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.²²⁵ In December 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.²²⁶ Further, the Commission made available Automated Maritime Telecommunications System (“AMTS”) licenses in Auctions 57 and 61.²²⁷ Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years, and a small business is defined as an entity with

²²⁰ *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review – Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket Nos. 03-103 and 05-42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, ¶¶ 28-42 (2005).

²²¹ *Id.*

²²² See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

²²³ Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. See Amendment of Parts 80 and 87 of the Commission's Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order*, WT Docket No. 96-82, 11 FCC Rcd 14849 (1996).

²²⁴ 13 C.F.R. § 121.201, NAICS code 517212.

²²⁵ A licensee may have a license in more than one category.

²²⁶ *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

²²⁷ See “Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,” Public Notice, 19 FCC Rcd 9518 (WTB 2004); “Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,” Public Notice, 20 FCC Rcd 7811 (WTB 2005).

attributed average annual gross revenues of more than \$3 million but less than \$15 million for the preceding three years.²²⁸ Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

108. **Offshore Radiotelephone Service.** This service operates on several ultra high frequencies (“UHF”) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.²²⁹ There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services.²³⁰ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.²³¹

109. **Multiple Address Systems (“MAS”).** Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines “small entity” for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.²³² “Very small business” is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.²³³ The SBA has approved of these definitions.²³⁴ The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.²³⁵ Seven winning bidders claimed status as small or very small businesses and won 611 licenses. On May 18, 2005, the Commission completed an auction (Auction No. 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

110. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of “Cellular and Other Wireless Telecommunications”. This definition provides that a small entity is any such entity employing no more than 1,500 persons.²³⁶ The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for

²²⁸ 47 C.F.R. § 80.1252.

²²⁹ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001-22.1037.

²³⁰ 13 C.F.R. § 121.201, NAICS code 517212.

²³¹ *Id.*

²³² See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, ¶ 123 (2000).

²³³ *Id.*

²³⁴ See *Alvarez Letter 1999*.

²³⁵ See “*Multiple Address Systems Spectrum Auction Closes*,” Public Notice, 16 FCC Rcd 21011 (2001).

²³⁶ See 13 C.F.R. § 121.201, NAICS code 517212.

private radio service, and of these, 1,433 were for private land mobile radio service.

111. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses, beginning on February 7, 2007,²³⁷ and closing on March 8, 2007.²³⁸ In that auction, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed \$15 million but do not exceed \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.²³⁹ Neither of the two winning bidders sought designated entity status.²⁴⁰

112. **Incumbent 24 GHz Licensees.** This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.²⁴¹ For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.²⁴² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.²⁴³ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.²⁴⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.²⁴⁵ Thus, under this second category and size standard, the majority of firms can, again, be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent²⁴⁶ and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

²³⁷ See “Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,” Public Notice, 21 FCC Rcd 12393 (WTB 2006).

²³⁸ See “Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,” Public Notice, 22 FCC Rcd 4714 (2007) (“Auction No. 69 Closing PN”).

²³⁹ Auction No. 69 Closing PN, Attachment C.

²⁴⁰ See Auction No. 69 Closing PN.

²⁴¹ 13 C.F.R. § 121.201, NAICS code 517212.

²⁴² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211.

²⁴³ *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.”

²⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212.

²⁴⁵ *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.”

²⁴⁶ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

113. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.²⁴⁷ “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.²⁴⁸ The SBA has approved these definitions.²⁴⁹ The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

114. **Broadband Radio Service.** 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”)).²⁵⁰ 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.²⁵¹ 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 small entities.²⁵² 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.

115. 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.²⁵³ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.²⁵⁴ 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.²⁵⁵ Consequently, we estimate

²⁴⁷ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967, ¶ 77 (2000) (“*24 GHz Report and Order*”); see also 47 C.F.R. § 101.538(a)(2).

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

²⁴⁹ See Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

²⁵⁰ *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*”).

²⁵¹ 47 C.F.R. § 21.961(b)(1).

²⁵² 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.

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

²⁵⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

²⁵⁵ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

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.²⁵⁶ Thus, we estimate that at least 1,932 licensees are small businesses.

116. **Television Broadcasting.** The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”²⁵⁷ The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having \$13 million or less in annual receipts.²⁵⁸ According to Commission staff review of the BIA Financial Network, Inc., Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of \$13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations²⁵⁹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

117. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

118. There are also 2,117 low power television stations (“LPTV”).²⁶⁰ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

119. **Radio Broadcasting.** The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.²⁶¹ Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”²⁶² According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or

²⁵⁶ 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.

²⁵⁷ U.S. Census Bureau, 2002 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/epcd/naics02/def/NDEF515.HTM>.

²⁵⁸ 13 C.F.R. § 121.201, NAICS code 515120.

²⁵⁹ “Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 21.103(a)(1).

²⁶⁰ *FCC News Release*, “Broadcast Station Totals as of September 30, 2007.”

²⁶¹ See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 515112).

²⁶² *Id.*

less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations²⁶³ are included.²⁶⁴ Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

120. **Auxiliary, Special Broadcast and Other Program Distribution Services.** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.²⁶⁵

121. The Commission estimates that there are approximately 5,618 FM translators and boosters.²⁶⁶ The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$6.5 million for a radio station or \$13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.²⁶⁷

122. **Cable and Other Program Distribution.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."²⁶⁸ The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.²⁶⁹ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.²⁷⁰ 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.²⁷¹ Thus, under this

²⁶³ "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

²⁶⁴ "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 C.F.R. § 121(a)(4).

²⁶⁵ 13 C.F.R. 121.201, NAICS codes 513111 and 513112.

²⁶⁶ See *supra* note 242.

²⁶⁷ 15 U.S.C. 632.

²⁶⁸ U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

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

²⁷⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

²⁷¹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

size standard, the majority of firms can be considered small.

123. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.²⁷² Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁷³ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁷⁴ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.²⁷⁵ Thus, under this second size standard, most cable systems are small.

124. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁷⁶ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁷⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²⁷⁸ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁷⁹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

125. **Open Video Services.** Open Video Service ("OVS") systems provide subscription services.²⁸⁰ The SBA has created a small business size standard for Cable and Other Program Distribution.²⁸¹ This standard provides that a small entity is one with \$13.5 million or less in annual

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

²⁷³ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

²⁷⁴ 47 C.F.R. § 76.901(c).

²⁷⁵ Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2. The data do not include 718 systems for which classifying data were not available.

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

²⁷⁷ 47 C.F.R. § 76.901(f); see "FCC Announces New Subscriber Count for the Definition of Small Cable Operator," Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

²⁷⁸ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

²⁷⁹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

²⁸⁰ See 47 U.S.C. § 573.

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

receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.²⁸² Affiliates of Residential Communications Network, Inc. (“RCN”) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

126. **Cable Television Relay Service.** This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.²⁸³ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.²⁸⁴ 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.²⁸⁵ Thus, under this size standard, the majority of firms can be considered small.

127. **Multichannel Video Distribution and Data Service.** MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.²⁸⁶ These definitions were approved by the SBA.²⁸⁷ On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.²⁸⁸ Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.²⁸⁹

²⁸² See <http://www.fcc.gov/csb/ovs/csovsr.html>.

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

²⁸⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

²⁸⁵ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

²⁸⁶ *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, ¶ 252 (2002).

²⁸⁷ See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 13, 2002).

²⁸⁸ See “*Multichannel Video Distribution and Data Service Auction Closes*,” Public Notice, 19 FCC Rcd 1834 (2004).

²⁸⁹ See “*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*,” Public Notice, 20 FCC Rcd 19807 (2005).

128. **Amateur Radio Service.** These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

129. **Aviation and Marine Services.** Small businesses in the aviation and marine radio services use a very high frequency (“VHF”) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.²⁹⁰ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.²⁹¹ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

130. **Personal Radio Services.** Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.²⁹² These services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”).²⁹³ There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.²⁹⁴ Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

²⁹⁰ 13 C.F.R. § 121.201, NAICS code 517212.

²⁹¹ *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

²⁹² 47 C.F.R. Part 90.

²⁹³ The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 C.F.R. Part 95.

²⁹⁴ 13 C.F.R. § 121.201, NAICS Code 517212.

131. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²⁹⁵ There are a total of approximately 127,540 licensees in these services. Governmental entities²⁹⁶ as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.²⁹⁷

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

132. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.²⁹⁸ Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business

²⁹⁵ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15-90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

²⁹⁶ 47 C.F.R. § 1.1162.

²⁹⁷ 5 U.S.C. § 601(5).

²⁹⁸ See 47 C.F.R. § 1.1162 for the general exemptions from regulatory fees. *E.g.*, Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

133. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

134. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.²⁹⁹ If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.³⁰⁰ Further, in accordance with the DCIA, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.³⁰¹ Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.³⁰²

135. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.³⁰³ However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

136. 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.³⁰⁴ In the *NPRM*, we have sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

137. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional

²⁹⁹ 47 C.F.R. § 1.1164.

³⁰⁰ 47 C.F.R. § 1.1164(c).

³⁰¹ Public Law 104-134, 110 Stat. 1321 (1996).

³⁰² 31 U.S.C. § 7701(c)(2)(B).

³⁰³ 47 C.F.R. § 1.1166.

³⁰⁴ 5 U.S.C. § 603.

circumstances.

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

138. None.

APPENDIX E

List of Commenters – Initial Comments

Commenter	Abbreviated name
American Association of Paging Carriers	AAPC
AT&T, Inc.	AT&T
DirecTV, Inc. and DISH Network LLC	DirecTV and DISH
Enterprise Wireless Alliance	EWA
Independent Telephone and Telecommunications Alliance	ITTA
National Cable and Telecommunications Association	NCTA
Personal Radio Steering Group, Inc.	PRSG
PCIA – The Wireless Infrastructure Association	PCIA
United States Telecom Association	USTA
Verizon Communications, Inc.	Verizon

List of Commenters – Reply Comments

Commenter	Abbreviated name
American Cable Association	ACA
AT&T, Inc.	AT&T
CTIA – The Wireless Association®	CTIA
DirecTV, Inc. and DISH Network LLC	DirecTV and DISH
Enterprise Wireless Alliance	EWA
Forest Industries Telecommunications	FIT
MetroPCS Communications, Inc.	MetroPCS
National Telecommunications Cooperative Association	NTCA
Satellite Industry Association	SIA
Sprint Nextel Corporation	Sprint
Verizon Communications, Inc.	Verizon
Wireless Cable Coalition	WCC

APPENDIX F

Proposed Letter to Submarine Cable Operators

[insert address of submarine cable operator]

Re:/ Regulatory Fees for Fiscal Year [insert year]

Our annual regulatory fee assessment for submarine cable operators is based on the total capacity for the submarine cable system. For this reason, we require submarine cable operators to advise us of the appropriate category for determining regulatory fees. Please indicate below the correct category and return this letter to us by February 15, 20__.

Submarine Cable Systems (capacity as of December 31)	Please check the appropriate category
< 2.5 Gbps	
2.5 Gbps or greater, but less than 5 Gbps	
5 Gbps or greater, but less than 10 Gbps	
10 Gbps or greater, but less than 20 Gbps	
20 Gbps or greater	

Thank you for your assistance in this matter.

CERTIFICATION STATEMENT

I _____ certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE _____ DATE _____