

58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.¹¹⁵ On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.¹¹⁶ Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses.¹¹⁷ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.¹¹⁸ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.¹¹⁹

32. **Advanced Wireless Services.** In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”), designated as Auction 66.¹²⁰ For the AWS-1 bands, the Commission has defined 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.¹²¹ In 2006, the Commission conducted its first auction of AWS-1 licenses.¹²² In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses won 142 licenses.¹²³ Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.¹²⁴ In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses.¹²⁵ Four winning bidders identified themselves as very small businesses, and three of the winning bidders identifying themselves as a small businesses won five AWS-1 licenses.¹²⁶

33. **Narrowband Personal Communications Services.** In 1994, the Commission

¹¹⁵ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

¹¹⁶ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

¹¹⁷ *Id.*

¹¹⁸ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

¹¹⁹ *Id.*

¹²⁰ See *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, AU Docket No. 06-30, *Public Notice*, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”);

¹²¹ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Report and Order*, 18 FCC Rcd 25,162, App. B (2003), *modified by* *Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, Order on Reconsideration*, 20 FCC Rcd 14,058, App. C (2005).

¹²² See *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, AU Docket No. 06-30, *Public Notice*, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”).

¹²³ See *Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66*, *Public Notice*, 21 FCC Rcd 10,521 (2006) (“*Auction 66 Closing Public Notice*”).

¹²⁴ See *id.*

¹²⁵ See *AWS-1 and Broadband PCS Procedures Public Notice*, 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

¹²⁶ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period*, *Public Notice*, 23 FCC Rcd 12,749 (2008).

conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million.¹²⁷ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.¹²⁸ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.¹²⁹ 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.¹³⁰ 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.¹³¹ The SBA has approved these small business size standards.¹³² A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.¹³³ Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

34. **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.¹³⁴ 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.¹³⁵ 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.¹³⁶ Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses —“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.¹³⁷ The SBA approved these small size standards.¹³⁸ An auction of 740 licenses was conducted in 2002 (one license in each of the 734

¹²⁷ *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).

¹²⁸ 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).

¹²⁹ *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*”).

¹³⁰ *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

¹³¹ *Id.*

¹³² See *Alvarez Letter 1998*.

¹³³ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

¹³⁴ 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*”).

¹³⁵ See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, ¶ 172.

¹³⁶ See *id.*

¹³⁷ See *id.*, 17 FCC Rcd at 1088, ¶ 173.

¹³⁸ See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 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.¹³⁹ A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.¹⁴⁰ 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.¹⁴¹ In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

35. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹⁴² An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.¹⁴³ Twenty winning bidders claimed 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). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

36. **Upper 700 MHz Band Licenses.** In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses.¹⁴⁴ On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.¹⁴⁵ The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

37. **700 MHz Guard Band Licenses.** In 2000, the Commission adopted the *700 MHz Guard Band Report and Order*, in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for “small businesses” and “very small businesses” for purposes

¹³⁹ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

¹⁴⁰ See Lower 700 MHz Band Auction Closes, *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

¹⁴¹ See *id.*

¹⁴² Service Rules for the 698-746, 747-762 and 777-792 MHz Band, 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 Telephone, 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 No. 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*, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

¹⁴³ See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

¹⁴⁴ *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

¹⁴⁵ See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

of determining their eligibility for special provisions such as bidding credits.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ SBA approval of these definitions is not required.¹⁴⁹ An auction of these licenses was conducted in 2000.¹⁵⁰ Of the 104 licenses auctioned, 96 licenses were won by 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 was held in 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.¹⁵¹

38. **Specialized Mobile Radio.** The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁵² The Commission defined a “very small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁵³ The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.¹⁵⁴ The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.¹⁵⁵ The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the \$15 million size standard won 38 licenses for the upper 200 channels.¹⁵⁶ A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business

¹⁴⁶ 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) (“700 MHz Guard Band Report and Order”).

¹⁴⁷ See *700 MHz Guard Band Report and Order*, 15 FCC Rcd at 5343, para. 108.

¹⁴⁸ See *id.*

¹⁴⁹ 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).

¹⁵⁰ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

¹⁵¹ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹⁵² 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹⁵³ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹⁵⁴ See *Alvarez Letter 1999*.

¹⁵⁵ See 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,” *Public Notice*, 19 FCC Rcd. 3921 (WTB 2004).

¹⁵⁶ 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).

status won five licenses.¹⁵⁷

39. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses.¹⁵⁸ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹⁵⁹ Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

40. 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 not exceeding \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.¹⁶⁰ 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.

41. **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 small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁶¹ For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁶² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

42. **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 licenses are assigned by auction, where mutually exclusive applications are accepted. 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

¹⁵⁷ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

¹⁵⁸ 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).

¹⁵⁹ See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

¹⁶⁰ See generally 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶¹ 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).

¹⁶² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

determining their eligibility for special provisions such as bidding credits.¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵ The SBA has approved these small size standards.¹⁶⁶ Auctions of Phase II licenses commenced on and closed in 1998.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰ In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.¹⁷¹ Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.¹⁷² In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

43. **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, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹⁷³ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have

¹⁶³ *Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

¹⁶⁴ *Id.* at 11068 ¶ 291.

¹⁶⁵ *Id.*

¹⁶⁶ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998 (*Alvarez to Phythyon Letter 1998*).

¹⁶⁷ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (WTB 1998).

¹⁶⁸ See *FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, 14 FCC Rcd 1085 (WTB 1999).

¹⁶⁹ See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (WTB 1999).

¹⁷⁰ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

¹⁷¹ See “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72,” *Public Notice*, 22 FCC Rcd 3404 (2007).

¹⁷² See *Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period*, Public Notice, 22 FCC Rcd 11573 (2007).

¹⁷³ See 13 C.F.R. § 121.201, NAICS code 517210.

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.¹⁷⁴

44. As of March 2010, there were 424,162 PLMR licensees operating 921,909 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 any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

45. **Fixed Microwave Services.** Microwave services include common carrier,¹⁷⁵ private-operational fixed,¹⁷⁶ and broadcast auxiliary radio services.¹⁷⁷ They also include the Local Multipoint Distribution Service (“LMDS”),¹⁷⁸ the Digital Electronic Message Service (“DEMS”),¹⁷⁹ and the 24 GHz Service,¹⁸⁰ where licensees can choose between common carrier and non-common carrier status.¹⁸¹ The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA’s definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons is considered small.¹⁸² For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁸³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

46. **39 GHz Service.** The Commission adopted small business size standards for 39 GHz licenses. A “small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million in the preceding three years.¹⁸⁴ A “very

¹⁷⁴ See generally 13 C.F.R. § 121.201.

¹⁷⁵ See 47 C.F.R. Part 101, Subparts C and I.

¹⁷⁶ See *id.* Subparts C and H.

¹⁷⁷ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁷⁸ See 47 C.F.R. Part 101, Subpart L.

¹⁷⁹ See *id.* Subpart G.

¹⁸⁰ See *id.*

¹⁸¹ See 47 C.F.R. §§ 101.533, 101.1017.

¹⁸² 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁸⁴ 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).

small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than \$15 million for the preceding three years.¹⁸⁵ The SBA has approved these small business size standards.¹⁸⁶ In 2000, the Commission conducted an auction of 2,173 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

47. **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.¹⁸⁷ 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 years.¹⁸⁸ 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 years.¹⁸⁹ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁹⁰ 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. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

48. **218-219 MHz Service.** The first auction of 218-219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 170 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).¹⁹¹ Of the 594 licenses, 557 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.¹⁹² In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, the Commission revised its small business size standards for the 218-219 MHz Service and defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁹³ The Commission defined a “very small business” 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

¹⁸⁵ *Id.*

¹⁸⁶ 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).

¹⁸⁷ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997) (“*LMDS Second Report and Order*”).

¹⁸⁸ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, para. 348.

¹⁸⁹ See *id.*

¹⁹⁰ See *Alvarez to Phythyon Letter 1998*.

¹⁹¹ See “*Interactive Video and Data Service (IVDS) Applications Accepted for Filing*,” Public Notice, 9 FCC Rcd 6227 (1994).

¹⁹² *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹⁹³ *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).

gross revenues not exceeding \$3 million for the preceding three years.¹⁹⁴ The SBA has approved these definitions.¹⁹⁵

49. **Location and Monitoring Service (“LMS”).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS licenses, the Commission has defined a “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.¹⁹⁶ 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.¹⁹⁷ These definitions have been approved by the SBA.¹⁹⁸ An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

50. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁹⁹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).²⁰⁰ For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²⁰¹ Census data for 2007 shows that there were 1,383 firms that operated that year.²⁰² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

51. **Air-Ground Radiotelephone Service.**²⁰³ The Commission has previously used the SBA’s small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.²⁰⁴ 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 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

¹⁹⁴ *Id.*

¹⁹⁵ See Alvarez to Phythyon Letter 1998.

¹⁹⁶ 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.

¹⁹⁷ Automatic Vehicle Monitoring Systems Second Report and Order, 13 FCC Rcd at 15192, para. 20; see also 47 C.F.R. § 90.1103.

¹⁹⁸ See Alvarez Letter 1998.

¹⁹⁹ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

²⁰⁰ BETRS is defined in sections 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

²⁰¹ 13 C.F.R. § 121.201, NAICS code 517210.

²⁰² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

²⁰³ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

²⁰⁴ 13 C.F.R. § 121.201, NAICS codes 517210.

three years not exceeding \$40 million.²⁰⁵ 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.²⁰⁶ These definitions were approved by the SBA.²⁰⁷ In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

52. **Aviation and Marine Radio 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 Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²⁰⁸ Census data for 2007 shows that there were 1,383 firms that operated that year.²⁰⁹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

53. **Offshore Radiotelephone Service.** This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.²¹⁰ There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that standard.²¹¹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.²¹² Census data for 2007 shows that there were 1,383 firms that operated that year.²¹³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

²⁰⁵ *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).

²⁰⁶ *Id.*

²⁰⁷ See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

²⁰⁸ 13 C.F.R. § 121.201, NAICS code 517210.

²⁰⁹ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

²¹⁰ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001-22.1037.

²¹¹ 13 C.F.R. § 121.201, NAICS code 517210.

²¹² *Id.*

²¹³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

54. **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. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than \$15 million in the preceding three years.²¹⁴ A 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 years.²¹⁵ The SBA has approved these definitions.²¹⁶ 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 March 5, 2010, there were over 11,500 MAS station authorizations. In 2001, an auction of 5,104 MAS licenses in 176 EAs was conducted.²¹⁷ Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 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.

55. With respect to 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 Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.²¹⁸ The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

56. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392-1395 MHz and 1432-1435 MHz bands, and in the unpaired 1390-1392 MHz band in 2007.²¹⁹ For these licenses, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding \$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.²²⁰ Neither of the two winning bidders claimed small business status.²²¹

57. **Incumbent 24 GHz Licensees.** This analysis may affect incumbent licensees who

²¹⁴ See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, ¶ 123 (2000).

²¹⁵ *Id.*

²¹⁶ See *Alvarez Letter 1999*.

²¹⁷ See “*Multiple Address Systems Spectrum Auction Closes*,” Public Notice, 16 FCC Rcd 21011 (2001).

²¹⁸ See 13 C.F.R. § 121.201, NAICS code 517210.

²¹⁹ See “*Auction of 1.4 GHz Band Licenses Scheduled for February 7, 2007*,” Public Notice, 21 FCC Rcd 12393 (WTB 2006); “*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*”).

²²⁰ *Auction No. 69 Closing PN*, Attachment C.

²²¹ See *Auction No. 69 Closing PN*.

were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²²² To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.²²³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census’ use of the classifications “firms” does not track the number of “licenses”. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent²²⁴ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

58. **Future 24 GHz Licensees.** With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An “entrepreneur” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$40 million.²²⁵ A “small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.²²⁶ A “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.²²⁷ The SBA has approved these small business size standards.²²⁸ In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses.²²⁹ Two of the winning bidders were very small businesses that won five licenses.

59. **Broadband Radio Service and Educational Broadband 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

²²² 13 C.F.R. § 121.201, NAICS code 517210.

²²³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

²²⁴ 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.

²²⁵ *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)(3).

²²⁶ *24 GHz Report and Order*, 15 FCC Rcd at 16967 ¶ 77; see also 47 C.F.R. § 101.538(a)(2).

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

²²⁸ See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

²²⁹ *Auction of 24 GHz Service Spectrum Auction Closes, Winning Bidders Announced for Auction 56, Down Payments Due August 16, 2004, Final Payments Due August 30, 2004, Ten-Day Petition to Deny Period, Public Notice*, 19 FCC Rcd 14738 (2004).

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”).²³⁰ 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 years.²³¹ 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.²³² 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. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.²³³ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.²³⁴ Auction 86 concluded in 2009 with the sale of 61 licenses.²³⁵ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

60. In addition, the SBA’s Cable Television Distribution Services 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.²³⁶ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television

²³⁰ *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, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593 ¶ 7 (1995).

²³¹ 47 C.F.R. § 21.961(b)(1).

²³² 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 of 1500 or fewer employees.

²³³ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

²³⁴ *Id.* at 8296.

²³⁵ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

²³⁶ 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.

Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”²³⁷ For these services, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²³⁸ To gauge small business prevalence for these cable services we must, however, use the most current census data. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.²³⁹ Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1,000 employees or more.²⁴⁰ Thus, the majority of these firms can be considered small.

61. **Television Broadcasting.** This Economic Census category “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.”²⁴¹ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.²⁴² The Commission has estimated the number of licensed commercial television stations to be 1,387.²⁴³ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.²⁴⁴ We therefore estimate that the majority of commercial television broadcasters are small entities.

62. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁴⁵ 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. 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 does not exclude any television station from the definition of a small business on

²³⁷ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), www.census.gov/naics/2007/def/ND517110.HTM#N517110.

²³⁸ 13 C.F.R. § 121.201, NAICS code 517210.

²³⁹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued November 2010).

²⁴⁰ *Id.*

²⁴¹ U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

²⁴² 13 C.F.R. § 121.201, NAICS code 515120 (updated for inflation in 2010).

²⁴³ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

²⁴⁴ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

²⁴⁵ “[Business 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).

this basis and is therefore possibly over-inclusive to that extent.

63. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.²⁴⁶ These stations are non-profit, and therefore considered to be small entities.²⁴⁷

64. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).²⁴⁸ Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

65. **Radio Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”²⁴⁹ The SBA has established a small business size standard for this category, which is: such firms having \$7 million or less in annual receipts.²⁵⁰ According to Commission staff review of BIA Advisory Services, LLC’s *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of \$7 million or less. Therefore, the majority of such entities are small entities.

66. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.²⁵¹ In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.²⁵² We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

67. **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.²⁵³

68. The Commission estimates that there are approximately 6,099 FM translators and boosters.²⁵⁴ The Commission does not collect financial information on any broadcast facility, and the

²⁴⁶ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

²⁴⁷ See generally 5 U.S.C. §§ 601(4), (6).

²⁴⁸ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

²⁴⁹ U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

²⁵⁰ 13 C.F.R. § 121.201, NAICS code 515112 (updated for inflation in 2010).

²⁵¹ “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 C.F.R. § 121.103(a)(1) (an SBA regulation).

²⁵² 13 C.F.R. § 121.102(b) (an SBA regulation).

²⁵³ 13 C.F.R. 121.201, NAICS codes 515112 and 515120.

²⁵⁴ See *FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

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 (\$7.0 million for a radio station or \$14.0 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.²⁵⁵

69. **Cable Television Distribution Services.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."²⁵⁶ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year.²⁵⁷ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

70. **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.²⁵⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁵⁹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁶⁰ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.²⁶¹ Thus, under this second size standard, most cable systems are small.

71. **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

²⁵⁵ See 15 U.S.C. § 632.

²⁵⁶ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110> (last visited Oct. 21, 2009).

²⁵⁷ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²⁵⁸ 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).

²⁵⁹ 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.

²⁶⁰ 47 C.F.R. § 76.901(c).

²⁶¹ Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

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.”²⁶² 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.²⁶³ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²⁶⁴ 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,²⁶⁵ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

72. **Open Video Systems.** Open Video Service (OVS) systems provide subscription services.²⁶⁶ The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²⁶⁷ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²⁶⁸ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²⁶⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.²⁷⁰ In addition, we note that the Commission has certified some OVS operators, with some now providing service.²⁷¹ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS

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

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

²⁶⁴ 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.

²⁶⁵ 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).

²⁶⁶ See 47 U.S.C. § 573.

²⁶⁷ 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

²⁶⁸ See 47 U.S.C. § 573.

²⁶⁹ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁷⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

²⁷¹ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

franchises.²⁷² The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.²⁷³ 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 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

73. **Cable Television Relay Service.** The industry in which Cable Television Relay Services operate comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁷⁴ The category designated by the SBA for this industry is “Wired Telecommunications Carriers.”²⁷⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, Census data for 2007 shows 3,188 firms in this category.²⁷⁶ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.²⁷⁷

74. **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

²⁷² See *13th Annual Report*, 24 FCC Rcd at 606-07 ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²⁷³ See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

²⁷⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁷⁵ 13 C.F.R. § 121.201, NAICS code 517110.

²⁷⁶ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

²⁷⁷ *Id.* As noted in para. 18 above with regard to the distinction between manufacturers of equipment used to provide interconnected VoIP and manufactures of equipment to provide non-interconnected VoIP, our estimates of the number of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are likely overstated because we could not draw in the data a distinction between such providers and those that provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time.

provisions such as bidding credits. It defines 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.²⁷⁸ These definitions were approved by the SBA.²⁷⁹ 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.²⁸⁰ 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.²⁸¹

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

76. **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.²⁸² 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”).²⁸³ 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 Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.²⁸⁴ 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

²⁷⁸ *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).

²⁷⁹ 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).

²⁸⁰ See “*Multichannel Video Distribution and Data Service Auction Closes*,” Public Notice, 19 FCC Rcd 1834 (2004).

²⁸¹ 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).

²⁸² 47 C.F.R. part 90.

²⁸³ 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.

²⁸⁴ 13 C.F.R. § 121.201, NAICS Code 517210.

under an SBA definition that might be directly affected by our action.

77. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²⁸⁵ There are a total of approximately 127,540 licensees in these services. Governmental entities²⁸⁶ 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.²⁸⁷

78. **Internet Service Providers.** *Internet Service Providers, Web Portals and Other Information Services.* In 2007, the SBA recognized two new small business economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,²⁸⁸ and (2) All Other Information Services.²⁸⁹

79. **Internet Service Providers.** The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,²⁹⁰ which has an SBA small business size standard of 1,500 or fewer employees.²⁹¹ These are also labeled "broadband." The latter are within the category of All Other Telecommunications,²⁹² which has a size standard of annual receipts of \$25 million or less.²⁹³ These are labeled non-broadband.

²⁸⁵ 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 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 for highway maintenance service to provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, 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.

²⁸⁶ 47 C.F.R. § 1.1162.

²⁸⁷ 5 U.S.C. § 601(5).

²⁸⁸ 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

²⁸⁹ 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

²⁹⁰ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁹¹ 13 C.F.R. § 121.201, NAICS code 517110.

²⁹² U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

²⁹³ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

80. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees.²⁹⁴ For the second category, the data show that 1,682 firms operated for the entire year.²⁹⁵ Of those, 1,675 had annual receipts below \$25 million per year, and an additional two had receipts of between \$25 million and \$ 49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

81. **Internet Publishing and Broadcasting and Web Search Portals.** This industry comprises establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.²⁹⁶ The SBA deems businesses in this industry with 500 or fewer employees small.²⁹⁷ According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with to 999 employees.²⁹⁸ Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

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

82. This *Notice of Proposed Rulemaking* does not propose any changes to the Commission's current compliance rules, but may include possible proposed information collection, reporting, and recordkeeping requirements.

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

83. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁹⁹

²⁹⁴ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5171103 (rel. Nov. 19, 2010) (employment size). The data show only two categories within the whole: the categories for 1-4 employees and for 5-9 employees.

²⁹⁵ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

²⁹⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search>

²⁹⁷ http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

²⁹⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ5&-_lang=en.

²⁹⁹ 5 U.S.C. § 603.

84. In Section I of this *NPRM*, we seek comment on whether and how the Commission should adjust the revised cost allocation percentages that would otherwise result from using updated FTE data and implementing the new cost allocation proposals.

85. In particular, as stated *supra* in Section I, our concern with minimizing any adverse economic impact of our proposed rules on small entities is guided by our goals of fairness, administrability, and sustainability. Accordingly, we believe that adjustments to fees paid by fee payors should be consistent with those goals. Specifically, we intend to mitigate any inequities that might result from imposition of substantial fee increases.

86. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. One option is to make all or most fee adjustments at one time. Another option is to provide interim adjustments, by phasing in the new fees over a period of time.

87. On the issue of revisiting the allocation resulting from this rulemaking, the Commission is considering undertaking this reexamination at regular intervals. Alternatively, such reexamination could be undertaken in response to comments by fee payors in the annual regulatory fee collection *NPRM*. Regardless of the method chosen, one underlying concern we have is to mitigate any adverse economic impact on small service providers who are likely least able to absorb unpredictable changes in fees from year to year.

88. In light of our stated goals, the Commission seeks comment on the abovementioned, and any other, means and methods that would minimize any significant economic impact of our proposed rules on small entities.

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

89. None.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

*Re: In the Matter of Procedures for Assessment and Collection of
Regulatory Fees, MD Docket No. 12-201, Notice of Proposed Rulemaking*

I am pleased that the Commission is seeking additional comments on ways to modify our regulatory fee structure – a reform which is long overdue. As I have said many times in the past, the Commission should update its fee structure to ensure that they are levied not only in a fiscally prudent manner, but in a nondiscriminatory and competitively neutral way as well.

I look forward to working with my colleagues and all stakeholders as we assess ways to reform our out-dated methodology. Also, I will pay special attention to ensuring that the Commission has solid legal authority for any ultimate reform measures that it approves. I thank the Chairman for his continued work on this matter as well as our terrific staff in the managing director's office and bureaus.



**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket Nos. 12-201, 08-65, Notice of Proposed Rulemaking

Fourteen years have passed since the Commission last realigned its regulatory fees to reflect changes in the communications marketplace. Needless to say, there have been many more changes since then. In 1998, each industry segment largely still played in its own sandbox—telephone companies offered telephone service, cable operators offered cable television, and so on. But today's currency is convergence: Telephone companies have entered the video market, cable operators are winning voice customers, satellite operators offer competitive radio, television, and broadband services, and wireless providers have unleashed a mobile revolution few if any saw coming.

The Commission must strive to keep pace with this swiftly changing industry—especially when, as here, Congress has affirmatively told us to do so in Section 9 of the Communications Act. I look forward to hearing from all interested parties about how we can update our regulatory fee structure to better reflect the current marketplace, and I accordingly support this Notice of Proposed Rulemaking.

