

and we deny its petition for reconsideration.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA) ¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Order* (NPRM),² as well as the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (Further NPRM).³ The Commission sought written public comments on the proposals in the NPRM and Further NPRM, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

Need for, and Objectives of, the Third Report and Order

11. The *Third Report and Order* (*Third R&O*) continues our efforts to allocate spectrum that can be used for the provision of advanced wireless services (AWS) to the public, which in turn supports our obligations under Section 706 of the 1996 Telecommunication Act ⁵ and, more generally, serves the public interest by promoting rapid and efficient radio communication facilities.

12. The *Third R&O* discusses the need for spectrum allocations of sufficient size and with particular characteristics so as to allow for the provision of AWS. Specifically, it evaluates spectrum that was formerly allocated to the Mobile-Satellite Service (MSS). The Commission previously concluded that 2 GHz MSS licensees could operate using a smaller amount of spectrum than that which had previously been allocated. The *Third R&O* allocates spectrum for fixed and mobile services (which could be made available for

AWS) in the 1990–2000 MHz, 2020–2025 MHz, and 2165–2180 MHz bands.

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

13. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

15. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹¹ “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”¹² As of 1992, there were approximately 85,006 governmental entities in the United States.¹³ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of

fewer than 50,000.¹⁴ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

Radiotelephone Operators. The Commission has not developed service rules for AWS spectrum, nor has it attempted to categorize potential licensees for this spectrum. However, because many of the comments we received in support of our efforts to allocate spectrum for AWS were submitted by commercial radiotelephone operators and because licensees of AWS-like bands in other countries include incumbent commercial radiotelephone operators, we believe that there is a high likelihood that the class of AWS licensees may ultimately consist of one or more radiotelephone operator. Therefore, we examine this category in greater depth. The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”¹⁵ Under that SBA category, a business is small if it has 1,500 or fewer employees.¹⁶ According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.¹⁷ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA’s definition. In addition, we note that there are 1807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, 858 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio telephony services, which are placed together in that data. We have estimated that 291 of these are small under the SBA small business size standard.¹⁸ Accordingly, based on this data, we estimate that not more than 291 radiotelephone operators

¹ See 5 U.S.C. 603. The RFA (codified at 5 U.S.C. 601–612) has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

² Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, Notice of Proposed Rulemaking and Order, 16 FCC Rcd 596 (2001), 66 FR 18740, April 11, 2001.

³ Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81, Memorandum Opinion and Order, 66 FR 47518, September 13, 2001, and Further Notice of Proposed Rule Making, 16 FCC Rcd 16043 (2001), 66 FR 47618, September 13, 2001.

⁴ See 5 U.S.C. 604.

⁵ Section 706 of the Communications Act of 1934, as amended, codified at 47 U.S.C. 157.

⁶ 5 U.S.C. 604(a)(3).

⁷ 5 U.S.C. 601(6).

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

⁹ 15 U.S.C. 632.

¹⁰ 5 U.S.C. 601(4).

¹¹ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹² 5 U.S.C. 601(5).

¹³ U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

¹⁴ *Id.*

¹⁵ 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322.

¹⁶ *Id.*

¹⁷ U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 513322 (October 2000).

¹⁸ See *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Communications Bureau, Table 5.3, page 5–5 (May 2002).