

has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Third Notice of Proposed Rulemaking (*Third NPRM*). Comment is requested in this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third NPRM* as provided in paragraph 77 of the *Third NPRM*. The Commission will send a copy of the *Third NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a).

#### *Need for, and Objectives of, the Proposed Rules*

3. The *Third NPRM* seeks comments on the reallocation of spectrum in the 1910–1920 MHz band that can be paired with spectrum in the 1990–2000 MHz band to support fixed and mobile services, including AWS. It proposes that additional flexibility be afforded to the UPCS spectrum (that remains in the 1910–1930 MHz band) in order to support a variety of UPCS devices, including voice and data devices, and asks whether additional unlicensed devices—such as community wireless networks—could also coexist in the band. The *Third NPRM* also proposes to reallocate spectrum at 2155–2165 MHz that was previously identified as candidate spectrum for AWS, and seeks the most appropriate means to relocate licensees operating in the 2150–2160/2162 MHz band. Together, these proposed actions continue our efforts to identify spectrum that is suitable for AWS, and to allocate our existing in such a way as to promote overall efficient use.

#### *Legal Basis*

4. The proposed action is authorized under sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332.

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

5. 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.<sup>2</sup> The RFA

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>3</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>4</sup> A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

6. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>6</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>7</sup> “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.”<sup>8</sup> As of 1992, there were approximately 85,006 governmental entities in the United States.<sup>9</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.<sup>10</sup> 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.”<sup>11</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>12</sup> According to the Bureau of the Census, only 12 firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.<sup>13</sup> Therefore, even if all 12 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.<sup>14</sup> Accordingly, based on this data, we estimate that not more than 291 radiotelephone operators would be affected by a decision to make additional spectrum available for AWS.

*Fixed Microwave Services.* The *Third NPRM* proposes to reallocate a 5 megahertz spectrum block (2160–2165 MHz) that is licensed to fixed point-to-point microwave services and was previously identified for reallocation for advanced services in the Commission’s *Emerging Technologies* proceeding.<sup>15</sup>

<sup>3</sup> 5 U.S.C. 601(6).

<sup>4</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

<sup>5</sup> 15 U.S.C. 632.

<sup>6</sup> 5 U.S.C. 601(4).

<sup>7</sup> 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).

<sup>8</sup> 5 U.S.C. 601(5).

<sup>9</sup> U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

<sup>10</sup> *Id.*

<sup>11</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322.

<sup>12</sup> *Id.*

<sup>13</sup> 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).

<sup>14</sup> See *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Communications Bureau, Table 5.3, page 5–5 (May 2002).

<sup>15</sup> Redevelopment of Spectrum to Encourage the Establishment of Services Using New and Innovative Technologies, ET Docket No. 92–9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992), 57 FR 49020, October 10, 1992 and 57 FR 48776, October 28, 1992; Second Report and Order, 8 FCC Rcd 6495 (1993), 58 FR 49220, September 22, 1993; Third Report and Order and Memorandum Opinion and

Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, title II, 110 Stat. 857 (1996).

<sup>2</sup> 5 U.S.C. 604(a)(3).