

comments on the proposals in the 18 GHz NPRM, including comment on the IRFA. In its 18 GHz Order, the Commission concluded that the rules adopted in that Order would not, under the RFA, affect small entities disproportionately. Many of the rules adopted in the 18 GHz Order pertained to entities, such as licensees of geostationary and non-geostationary space stations, which, because of their size, do not qualify as small entities. While a few of the rules adopted concerned terrestrial facilities, such as microwave services, which qualify as small entities because of their size, the Commission concluded that "procedures do not affect small entities disproportionately and it is likely no additional outside professional skills are required to complete the annual report indicating the number of small antenna earth stations actually brought into service." We received no petitions for reconsideration of that Final Regulatory Flexibility Analysis.

10. Subsequently, the Commission addressed issues unrelated to its RFA analysis in its First Order on Reconsideration. The First Order on Reconsideration altered several previously adopted rules, including changing the power flux density value for the 18.3–18.8 GHz frequency band and extending the same ten-year comparable facilities relocation policy to all FS operations in the 18 GHz band. The First Order on Reconsideration also decided no longer to require the use of the Legacy List coordination process. Finally, the Commission considered the impact of its rule changes on small entities and concluded that the rules adopted would not, under the RFA, affect small entities disproportionately.

11. In this Second Order on Reconsideration, we address issues unrelated to earlier RFA analysis and promulgate additional final rules. This additional Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

12. This Second Order on Reconsideration grants, in part, a Petition for Reconsideration filed in this proceeding by the Hughes Electronics Corporation (Hughes). This Order also denies a Petition for Reconsideration filed by the Satellite Industry Association (SIA) filed against the First Order on Reconsideration. In response to the Hughes Reconsideration Petition, the Commission alters the 18 GHz band plan to make the fixed-satellite service (FSS) the sole primary spectrum allocation in the 18.3–18.58 GHz band. The Commission's actions recognize the increased number of frequency

spectrum options that the Commission has recently made available to licensees in the terrestrial fixed service (FS), the other primary service currently located in the 18.3–18.58 GHz band. The Commission also allows the blanket licensing of GSO FSS facilities in the 18.3–18.58 GHz band and 29.25–29.5 GHz bands and—consistent with the band clearing procedures that we have adopted in other portions of the frequency spectrum—the Commission adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3–18.58 GHz band. These changes to the Commission's rules will help promote the efficient use of spectrum for existing and future users.

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

13. No comments were submitted in direct response to the IRFA.

14. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. 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 adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "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." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. 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 (91 percent) are small entities. Below, we further

describe and estimate the number of small entity licensees that may be affected by the adopted rules.

15. *Satellite Telecommunications.* The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having \$12.5 million or less in annual receipts. In addition, a second SBA size standard for Other Telecommunications includes "facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems," and also has a size standard of annual receipts of \$12.5 million or less. According to Census Bureau data for 1997, there were 324 firms in the category Satellite Telecommunications, total, that operated for the entire year. Of this total, 273 firms had annual receipts of \$5 million to \$9,999,999 and an additional 24 firms had annual receipts of \$10 million to \$24,999,990. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 1997, there were 439 firms in the category Satellite Telecommunications, total, that operated for the entire year. Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional 6 firms had annual receipts of \$10 million to \$24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

16. *Space Stations (Geostationary).* Commission records reveal that there are 15 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

17. *Fixed Satellite Transmit/Receive Earth Stations.* Currently there are 10 operational fixed-satellite transmit/receive earth stations authorized for use in the 18.3–18.58 GHz and 29.25–29.5 GHz bands. We do not request or collect annual revenue information, and thus are unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

18. *Broadcast Auxiliary Service.* (BAS) 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