

video services to subscribers.⁹⁰ The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.⁹¹ In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.⁹² The Commission established this small business definition in the context of this particular service and with the approval of the SBA.⁹³ The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).⁹⁴ Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.⁹⁵ 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 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by these revised rules.

Wireless and Commercial Mobile Services

31. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.⁹⁶ According to the Census Bureau, only twelve

radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁹⁷ 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 1,780 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 *Telecommunications Provider Locator*, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.⁹⁸ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by these revised rules.

32. *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 1,000 such non-nationwide licensees and four nationwide licensees currently authorized to use the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.⁹⁹ According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹⁰⁰ If this general ratio continues in 2002 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

33. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰¹ We have 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. 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.¹⁰² The SBA has approved these definitions.¹⁰³ To date, three Phase II 220 MHz auctions have been conducted. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three Nationwide (NWA) licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.¹⁰⁴ Thirty-nine companies claiming small or very small businesses status won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Of the 225 licenses auctioned, 222 were sold.¹⁰⁵ Fourteen companies claiming small or very small business status won 158 licenses. The third auction included four licenses; two EA licenses and two EAG licenses.¹⁰⁶ No company claiming small or very small business status won licenses in the third auction.

34. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰⁷ We have 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. Additionally, 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 \$3 million for the preceding three years. An auction of 104 licenses (two in each of the 52 Major Economic Areas (MEAs)) commenced on September 6, 2000, and closed on September 21, 2000.¹⁰⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine winning bidders. Five of the winning bidders claimed small or very small business status and won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001.¹⁰⁹ All eight of the licenses auctioned were sold to three winning bidders. One of the winning bidders

⁹⁰ For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). See 66 FR 36177.

⁹¹ *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

⁹² 47 CFR 21.961 and 1.2110.

⁹³ *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*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

⁹⁴ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *id.* At 9608.

⁹⁵ 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 for "other telecommunications" (annual receipts of \$11 million or less). See 13 CFR 121.201.

⁹⁶ 13 CFR 121.201, NAICS code 513322.

⁹⁷ 1992 Census, Series UC92-S-1, at Table 5, NAICS code 513322.

⁹⁸ *Telecommunications Provider Locator*, Table 1 (November 2001).

⁹⁹ 13 CFR 121.201, NAICS code 513322.

¹⁰⁰ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

¹⁰¹ 220 MHz *Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at paragraphs 291-295 (1997).

¹⁰² *Id.* at paragraph 291.

¹⁰³ See Letter to D. Phythion, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

¹⁰⁴ Phase II 220 MHz Service Auction Closes", Public Notice, 14 FCC Rcd 605 (1998).

¹⁰⁵ "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

¹⁰⁶ "Multiple Radio Service Auction Closes", Public Notice, 17 FCC Rcd 1446 (2002).

¹⁰⁷ See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

¹⁰⁸ See generally Public Notice, "700 MHz Guard Bands Auction Closes," 15 FCC Rcd 18026 (2000).

¹⁰⁹ "700 MHz Guard Bands Auction Closes", Public Notice 16 FCC Rcd 4590 (2001).