

permitting them to deploy facilities on tribal lands. This 2nd *R&O* also addresses issues raised in the *FNPRM*. In the *FNPRM*, the Commission requested comment on whether it should expand the use of bidding credits. Specifically, the Commission sought comment as to whether to: (1) Apply bidding credits to entities who undertake to serve non-tribal areas and/or tribal areas with telephone penetration levels above 70 percent, but significantly below the national penetration average; (2) award bidding credits for use in future auctions to existing geographic area licensees who deploy facilities in unserved tribal communities; and, (3) grant bidding credits to licensees who enter into partitioning agreements with tribal governments that enable tribal entities to provide service, either directly or by way of a third-party carrier. It is the Commission's goal to ensure that all Americans have access to telecommunications service.

19. While the Commission continues to believe that the tribal lands bidding credit is a useful device in improving telephone penetration rates on tribal lands, it concludes that the specific measures proposed in the Commission's *FNPRM* to encourage greater deployment should not be adopted at this time. Given the nascent state of the tribal lands bidding credit program, as well as the lack of a comprehensive record supporting the proposed extensions of the bidding credit, the Commission believes that it is premature to expand the use of bidding credits as proposed.

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

20. No comments were 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.

21. 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. 5 U.S.C. 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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). 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). 15 U.S.C. 632.

22. Cellular Licensees. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322. Under that SBA category, a business is small if it has 1,500 or fewer employees. 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. 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, the Commission notes 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. See *Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (May 2002). The Commission has estimated that 291 of these are small under the SBA small business size standard. Accordingly, based on this data, the Commission estimates that not more than 291 cellular service providers will be affected by these revised rules.

23. 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 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, the Commission applies the definition under the SBA rules applicable to "Cellular and Other Wireless Telecommunication" companies. This category provides that a small business

is a wireless company employing no more than 1,500 persons. 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. If this general ratio continues in 2002 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

24. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. 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 determining their eligibility for special provisions such as bidding credits and installment payments. See 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, PR Docket No. 89–552, *Third Report and Order*, 62 FR 16004 (April 3, 1997). 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. 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. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 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, 683 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction.

The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

25. 700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, 65 FR 17594 (April 4, 2000). A small