

method. The Commission therefore seeks comment on whether buildout difficulties should be resolved using an ad hoc or waiver approach.

28. *Increasing the bidding credit limit.* In addition to the required construction requirements, another possibility for the poor response may be that the existing bidding credit may not provide carriers sufficient incentive to deploy facilities on tribal lands. Although no applicant has yet requested a larger credit than the one called for under the tribal lands bidding credit methodology, it may be that the current bidding credit amounts are not adequate to allow carriers to recoup a significant portion of infrastructure costs. Accordingly, the Commission seeks comment on whether the existing tribal lands bidding credit remains effective in encouraging carriers to provide service in tribal areas. The Commission also requests comment on whether and how the bidding credit amount and methodology should be modified to provide a greater incentive for carriers to deploy facilities on tribal lands.

29. *Adjustment of the Bidding Credit based on 2000 Census Data.* Recently issued data from the 2000 Census indicates that telephone penetration rates on tribal lands have increased appreciably from the levels reported in 1990. However, despite the improvement in access to basic telephone service experienced by many tribal areas, the census information reveals that telephone penetration rates on tribal lands remain well below the 97.6 percent penetration rate found in the country as a whole. Certain tribal lands continue to have unusually low telephone penetration levels despite gains in subscribership numbers since the 1990 Census. Accordingly, the Commission seeks comment on whether the improved tribal penetration rates require that certain aspects of the bidding credit be modified. For example, should the credit formula be adjusted using 2000 Census figures instead of 1990 Census figures? While some of the more populous tribal areas continue to have penetration rates below 70 percent, many tribal lands now have penetration rates above 70 percent. Accordingly, to the extent that tribal penetration rates have improved, but remain below the national average, should the bidding credit formula be modified so that tribal areas with penetration rates greater than 70 percent but below the national average are eligible for the credit? What should the benchmark be? Further, with respect to tribal lands that have been identified by the 2000 Census as continuing to have unusually low penetration rates, the

Commission requests comment on whether the Commission should make adjustment to the bidding credit to provide additional incentives for such areas.

30. *Extending the Tribal Lands Bidding Credit to Adjacent Non-tribal Areas with Low Penetration Rates.* The Commission recognizes that there may be certain areas abutting tribal lands that also lack adequate access to telecommunications services. It is likely that some non-tribal areas share with their neighboring tribal communities the same barriers to access, such as geographic remoteness, sparse population clusters, and low income levels. Further, it is likely that areas adjacent to tribal communities also have significant Native American populations. Accordingly, in the *2nd FNPRM*, the Commission solicits comment on whether bidding credits should be extended to non-tribal areas with penetration rates of less than 70 percent. Specifically, the Commission seeks comment on whether it should allow a limited expansion of the tribal lands bidding credit program that would allow carriers who seek bidding credits in order to serve qualifying tribal lands to obtain additional credit for extending their coverage to immediately adjacent non-tribal areas that also have penetration rates of less than 70 percent.

Legal Basis

31. The Commission tentatively concludes that it has authority under sections 4(i), 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j) and 706, to adopt the proposals set forth in the *2nd FNPRM*.

Description and Estimate of the Number of Small Entities to which the rules will apply.

32. 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.

33. 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.

34. 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