

comment on how to allocate and license this spectrum, consistent with the court's opinion and the Communications Act. The *2R&O* resolves the issues we raised in the *2FNPRM*.

*Summary of Significant Issues Raised by the Public in Responses to the IRFA*

36. No comments addressed the IRFA, or otherwise discussed issues that may impact small entities.

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

37. The RFA directs the Commission to provide a description of, and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA defines the term "small entity" as having the same meaning as "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 that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A "small organization" is generally defined as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field \* \* \*." A "small governmental jurisdiction" is generally defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand \* \* \*."

38. The rules adopted in the *2R&O* will affect applicants for NCE stations on non-reserved channels and frequencies. Under the applicable provisions of the Act, NCE stations are those owned and operated by: (1) Nonprofit educational organizations after showing that they will use the stations to advance educational programs, or (2) municipalities that use the stations to air only noncommercial programs for educational purposes. The rules could also affect commercial stations by causing delay in processing their applications; although the new rules establish that applications for NCE stations will be returned as unacceptable for filing if they become and remain mutually exclusive with applications for commercial stations, the rules continue to permit applicants for NCE stations to apply for non-reserved channels, and in some services, the opportunity to negotiate a settlement with a competing applicant for a commercial station. In addition, our

new policies may cause some delay to applicants for commercial stations, whether large or small, that seek to use certain vacant allotments; although as a general matter we will allow applicants for NCE stations to attempt to reserve channels only when we are conducting an allocation proceeding to amend the Table of Allotments, we will permit applicants for NCE stations an opportunity to reserve channels for which we have already concluded the allocation proceeding, if the Commission initiated the proceeding before August 7, 2000, and never accepted applications for the channel. Thus, the rules may affect "small business concerns," "small organizations," and "small governmental jurisdictions." The number of possible future applicants cannot be determined.

39. *Radio*. Applicants could also include existing radio stations. As of June 30, 2002, the Commission had licensed a total of 13,261 radio stations, of which 4,811 were AM stations, 6,147 were commercial FM stations, and 2,303 were NCE FM stations. As of the same date, the Commission had also licensed 3,770 FM translator and booster stations (commercial and NCE). SBA defines as a small business those radio broadcasting stations that have no more than \$6 million in annual receipts. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on August 22, 2002, about 10,800 commercial radio stations have revenue of \$6 million or less. Many commercial radio stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimate of 10,800 commercial radio stations overstates the number that qualify as small entities. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

40. *Television*. Applicants could also include TV stations. As of June 30, 2002, the Commission had licensed a total of 1,712 full-power TV stations, of which 1,331 commercial TV stations, were 381 were NCE TV stations. As of the same date, the Commission had licensed 4,741 TV translator stations, 2,120 LPTV stations, and 554 Class A TV stations. SBA defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database on August 22, 2002, about 870 of the commercial

TV stations have revenues of \$12 million or less. Many commercial TV stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimate of 870 commercial TV stations overstates the number that qualify as small entities. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

41. The Commission anticipates that none of the rules adopted in the *2R&O* will result in an increase in the existing reporting and recordkeeping requirements of potential applicants.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

42. The RFA requires an agency to describe any significant alternatives that it has considered in adopting its rules, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

43. The *2R&O* establishes new policies for licensing non-reserved spectrum, in a manner consistent with the court's decision in the *NPR* case, and the applicable provisions of the statute. As explained in detail in the *2R&O*, section 309(j)(1) of the Act generally requires the Commission to resolve mutually exclusive applications for licenses to use spectrum via competitive bidding, but section 309(j)(2)(C) exempts the licenses for NCE stations from this process. In the *R&O* in this docket, the Commission concluded that the auction exemption applied only to licenses for NCE stations to use the channels that Commission has reserved for their exclusive use, and that applicants for licenses for NCE stations to use non-reserved spectrum must compete for them via competitive bidding; in the *NPR* case, the D.C. Circuit decided that the auction exemption extended to licenses for NCE stations to use non-reserved spectrum. As a result, the Commission's new