

possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The analysis is found in Appendix A. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the NPRM, and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## II. Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the FCC has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the NPRM for comments. The FCC will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

12. In this NPRM the FCC proposes a number of changes and ask for comments concerning the rules governing the 2500–2690 MHz band, for the Multipoint Distribution Service (MDS), the Multichannel Multipoint Distribution Service (MMDS), and the Instructional Television Fixed Service (ITFS). The FCC's proposals include:

- Proposing technical rules to increase licensee flexibility;
- Seeking comment on revising the band plan;
- Proposing service rules for mobile operation;
- Proposing to encourage entrepreneurial efforts to develop new technologies and services by opening ITFS spectrum to a wide range of applicants;
- Proposing to simplify and streamline the licensing process;
- Proposing application filing and processing to facilitate electronic filing in ULS;

- Proposing to consolidate these services under Part 101;
- Tentatively concluding that MDS and ITFS licensees should receive a six-month transition period after application processing in ULS begins before requiring mandatory electronic filing in ULS;
- Suspending the acceptance and processing of applications in this band, with certain exceptions, until the completion of this rulemaking proceeding;
- Suspending the current August 16, 2003 construction deadline for BTA authorization holders; and
- Proposing to assign ITFS licenses through competitive bidding.

13. The FCC believes that its proposals will encourage the enhancement of existing services using this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services. The FCC also believes that its proposals will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than the government, to determine how this band will best be used.

### *Legal Basis*

14. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

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

15. 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 proposed 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 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. The definition of “small governmental jurisdiction” is one with a population of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on how many of these entities have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the FCC estimates that 96 percent, or about 81,600, are small entities that may be affected by the FCC's rules.

16. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. In this section, the FCC further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the FCC publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the FCC discusses the total estimated numbers of small businesses that might be affected by its actions.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the FCC established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the