

2001.³ The Commission sought written public comments on the proposals in the *NPRM* and *Further NPRM*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

Need for, and Objectives of, the Second Report and Order

20. The goal of the *Second Report and Order* (Second R&O) is to promote the provision of advanced wireless services (AWS) to the public, which in turn supports our obligations under section 706 of the 1996 Telecommunication Act⁵ and, more generally, serves the public interest by promoting rapid and efficient radio communication facilities.

21. The *Second R&O* discusses the need for spectrum allocations of sufficient size and with particular characteristics so as to allow for the provision of AWS, and evaluates spectrum that could be allocated to support these services. Specifically, the *Second R&O* allocates spectrum that is suitable for advanced services in the 1710–1755 MHz, 2110–2150 MHz, and 2150–2155 MHz bands.

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

22. There were no comments 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

23. 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.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A

³ Amendment of part 2 of the Commission’s rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 16 FCC Rcd 16043 (2001) 66 FR 47591, September 13, 2001.

⁴ See 5 U.S.C. 604.

⁵ Section 706 of the Communications Act of 1934, as amended, codified at 47 U.S.C. 157.

⁶ 5 U.S.C. 604(a)(3).

⁷ 5 U.S.C. 601(6).

⁸ 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). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business

“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).⁹

24. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹¹ “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”¹² As of 1992, there were approximately 85,006 governmental entities in the United States.¹³ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.¹⁴ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

25. *Fixed Microwave Services.* Microwave services include common carrier,¹⁵ private-operational fixed,¹⁶ and broadcast auxiliary radio services.¹⁷ At present, there are approximately

applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

⁹ 15 U.S.C. 632.

¹⁰ 5 U.S.C. 601(4).

¹¹ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹² 5 U.S.C. 601(5).

¹³ U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

¹⁴ *Id.*

¹⁵ 47 CFR 101 *et seq.* (formerly, part 21 of the Commission’s rules).

¹⁶ Persons eligible under parts 80 and 90 of the Commission’s rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

¹⁷ Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission’s rules. See 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA’s definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.¹⁸ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.¹⁹ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.²⁰ Thus, under this size standard, the great majority of firms can be considered small.

26. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately 8,210 are issued for frequencies in the *Emerging Technologies* bands affected by this proceeding. In addition, these bands contain approximately 70 licenses in the paging and radiotelephone service and the general aviation and air-ground radio telephone services. Thus, assuming that these entities also qualify as small businesses, as many as 8,280 small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation under rules originally adopted ten years ago in the Commission’s *Emerging Technologies* proceeding. The *Second Report and Order* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not modify the class of licensees that are subject to these relocation provisions.

27. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint, one-way video services to subscribers, and Local Multipoint Distribution Service (LMDS).²¹ The Commission

¹⁸ 13 CFR 121.201, NAICS code 517212 (formerly 513322).

¹⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Employment Size of Firms Subject to Federal Income Tax: 1997,” Table 5, NAICS code 517212 (issued Oct. 2000).

²⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

²¹ For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS) and