

recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.²² In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.²³ The Commission established this small business definition in the context of this particular service and with the approval of the SBA.²⁴ The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).²⁵ Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.²⁶ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Because the Commission's action only affects MDS operations in the 2150–2155 MHz band, the actual number of MDS providers who will be affected by the *Second Report and Order* will only represent a small fraction of those 440 small business licensees.

the Multichannel Multipoint Distribution Service (MMDS). See 66 FR 36177.

²² Amendment of parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, *Report and Order*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

²³ 47 CFR 21.961 and 1.2110.

²⁴ Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131, *Report and Order*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

²⁵ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *id.* at 9608.

²⁶ 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j)). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 CFR 121.201.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. The *Second R&O* addressed the possible use of frequency bands below 3 GHz to support the introduction of new AWS, but does not propose service rules. Thus, the item contains no new reporting, recordkeeping, or other compliance requirements. Because the item does not establish procedures for the relocation of MDS incumbents from the 2150–2155 MHz band, there are no new compliance requirements for MDS at this time.

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

29. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, 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 and reporting requirements under the rule for such 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 such small entities."²⁷

30. Providing spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services is critical to the continuation of technological advancement. First and foremost, the Commission believes that our proposal to explore the possible use of several frequency bands that could offer a wide range of voice, data, and broadband services over a variety of mobile and fixed networks may provide substantial new opportunities for small entities.

31. However, we realize that some entities must be displaced to clear a sufficient quantity of contiguous spectrum to support new services. We endeavored to avoid this effect by identifying unencumbered spectrum, but spectrum in the suitable frequency range is heavily used already and a sufficient amount of unencumbered spectrum simply does not exist. We have therefore sought to minimize an adverse impact by proposing to reallocate frequency bands for those incumbents, including small entities, which might be accommodated in other spectrum and could be relocated more easily. The spectrum we allocate in the

1710–1755 MHz band is currently used for Federal government services, and therefore there are no non-Federal government incumbent small entities that will be displaced by the reallocation of this band. Similarly, as noted in paragraph 28 of the *Second R&O*, the 2110–2150 MHz band was previously identified as an Emerging Technology band, and relocation procedures already exist for incumbents in this band. These existing procedures (as modified in the *Second R&O*) should serve to ease the relocation of small entity incumbents in the 2110–2150 MHz band, and make reallocation of this band preferable to the reallocation of other bands where we would have to establish new relocation rules.

32. Finally, the Commission has already received extensive comments in this proceeding on issues related to the possible reallocation of the 2150–2160 MHz (2.1 GHz) spectrum for advanced wireless purposes. Comments filed by the multipoint distribution/instructional television fixed services industry and several equipment manufacturers argue that the 2.1 GHz band is necessary for the continued roll-out of fixed wireless services across the country. Other commenters support the use of 2.1 GHz for advanced wireless services. Although many commenters ask that we reallocate a large contiguous spectrum block to include the entire 2150–2160 MHz band, we instead decide to reallocate 5 megahertz in the 2150–2160 MHz band as part of a 45 megahertz block of contiguous spectrum that can be used to provide advanced services. By doing so, we satisfy the need to designate a large block of contiguous spectrum that can be paired in order to allow for the deployment of advanced services (and thus, serve the goals of this proceeding). However, by allocating 5 megahertz of existing MDS spectrum, we retain greater flexibility to accommodate small entities that are MDS licensees than had we redesignated the entire 2.1 GHz MDS spectrum. For example, paragraph 39 of the *Second Report and Order*, notes that we retain the option to realign MDS spectrum to a 10 megahertz block in the 2155–2165 MHz band. Had we reallocated the entire 2.1 GHz MDS spectrum, as some commenters had suggested, this option would not have been available.

Report to Congress

33. The Commission will send a copy of the *Second Report and Order* including this FRFA, in a report to be sent to Congress pursuant to the

²⁷ 5 U.S.C. 603(c)(1) through (c)(4).