

basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

48. *Mobile Satellite Stations.* There are 21 licensees. On February 10, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking* allowing licensees in the Mobile Satellite Services to use their spectrum for Ancillary Terrestrial Communications (ATC).¹⁰⁶ Licensees may construct towers to provide ATC service. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

49. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

50. *Digital Audio Radio Services (DARS).* Commission records show that there are 2 Digital Audio Radio Services authorizations. We do not request nor collect annual revenue information, and, therefore, we cannot estimate the number of small businesses under the SBA definition.

Non-Licensee Tower Owners

51. The Commission's rules require that any entity proposing to construct an antenna structure 200 feet or higher or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854.¹⁰⁷ For this and other reasons, non-licensee tower owners may be subject to the requirements proposed in the NPRM and draft Nationwide Programmatic Agreement. As of April 2003, approximately 92,855 towers were included in the Antenna Structure Registration database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep

information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.¹⁰⁸ Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA's definition for cellular and other wireless telecommunications services.¹⁰⁹

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. Specific requirements that the draft Nationwide Agreement would impose on Applicants include, first, determining whether an exclusion applies to their proposed construction project, thereby obviating the need to submit Section 106 materials to the SHPO/THPO.¹¹⁰ Applicants should maintain records to verify the applicability of any exclusion.¹¹¹ If alternative language proposed by the Navajo Nation is adopted, Applicants will also be required to provide notification of most excluded projects to potentially affected Indian tribes.¹¹² If no exclusion applies, the language discussed in the Telecommunications Working Group includes specific steps that Applicants shall follow to identify Indian tribes and Native Hawaiian Organizations (NHOs) that may attach religious and cultural significance to potentially affected historic properties. These steps offer those tribes and NHOs a full opportunity to participate in the process; to refer Indian tribes' requests for government-to-government consultation to the Commission; and to maintain confidentiality of private or sensitive information.¹¹³

53. The draft Nationwide Agreement also sets forth required procedures for seeking local government and public participation; considering public comments and forwarding them to the

SHPO/THPO; and for identifying consulting parties.¹¹⁴ In addition, the draft Nationwide Agreement sets forth standards for applicants to apply in defining the area of potential effects (APE); in identifying Historic Properties within the APE; in evaluating the historic significance of identified properties; and in assessing the effects of the Undertaking on Historic Properties.¹¹⁵ Once identification, evaluation, and assessment are complete, the draft Nationwide Agreement requires Applicants to provide the SHPO/THPO and consulting parties with a Submission Packet including the appropriate form, which requires specified information about the Applicant, the project, and its review.¹¹⁶ The draft Nationwide Agreement also sets forth procedures for Applicants to follow upon receiving certain responses from the SHPO/THPO. It also sets forth procedures for developing Memoranda of Agreement to mitigate adverse effects.¹¹⁷ Finally, the draft Nationwide Agreement prescribes procedures for Applicants to follow in the event of inadvertent or post-review discoveries,¹¹⁸ and sets forth potential measures that the Commission may require Applicants to take in response to a complaint alleging construction prior to compliance with section 106.¹¹⁹

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

54. The RFA requires an agency to describe any significant, specifically small business, 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 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.¹²⁰

55. In general, the alternative of exempting small entities from the requirements proposed in the NPRM

¹⁰⁶ In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, FCC 03-15 (rel. Feb 10, 2003).

¹⁰⁷ 47 CFR 17.4.

¹⁰⁸ We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

¹⁰⁹ 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212. Under this category, a business is small if it has 1,500 or fewer employees.

¹¹⁰ Nationwide Agreement, section III.A.

¹¹¹ *Id.*

¹¹² *Id.*, section III.B.

¹¹³ *Id.*, IV.D.—IV.H., IV.J, Alternative A. Alternative B, proposed by the United South and Eastern Tribes, Inc., encourages Indian tribes and NHOs to agree to protocols for relations between applicants and tribes or NHOs in lieu of direct government consultation, but does not specify such protocols.

¹¹⁴ *Id.*, Part V.

¹¹⁵ *Id.*, Part VI. To a substantial extent, these standards are taken directly from the Council's rules.

¹¹⁶ *Id.*, section VII.A.1. and Attachments 3 and 4.

¹¹⁷ *Id.*, sections VII.B.3, VII.C.2, VII.C.3, VII.C.6, and VII.D.

¹¹⁸ *Id.*, Part IX.

¹¹⁹ *Id.*, section X.C.

¹²⁰ 5 U.S.C. 603(c).