

the basis of DMAs instead of CEAs. We believe that licensing MVDDS on the basis of DMAs may place wireless competitors on the same economic footing as cable systems, which generally have a royalty-free statutory copyright license to retransmit local television programming within the DMA of the station being rebroadcast. In addition, we believe that the use of DMAs may be administratively easier for licensees due to the close nexus between the television viewer market areas as determined by the DMA delineation and the proposed use of the service (the delivery of television programming).

7. We also took the opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service. We believe that reducing the build out period from ten years to five years will ensure effective use of the spectrum and a faster deployment of service to the public.

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

8. We received no comments in response to the IRFA in the *Second Further Notice*.

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

9. 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. 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 Small Business Administration (SBA).

10. *Small Multichannel Video Programming Distributors (MVPDs)*. The SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had

receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below each service individually to provide a more precise estimate of small entities.

11. *Cable Services*. The Commission has developed, with SBA's approval, a definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. In 1996, the Commission estimated that 1,439 cable operators qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to merge with other cable operators. Consequently, using this definition, we estimate that the decisions and rules may affect fewer than 1,439 small entity cable system operators.

12. The Communications Act defines a small cable system operator as "a cable operator that, directly or through an affiliate, serves in the aggregate less than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we deem an operator serving fewer than 617,000 subscribers to be a small operator under the Communications Act definition, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *DBS Service*. DBS falls within the SBA definition of Cable and Other Program Distribution (NAICS 513220). As noted, this definition provides that a small entity has \$12.5 million or less in annual receipts. The operational licensees of DBS services in the United States are governed by Part 100 of the

Commission's Rules. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees meeting this definition that could be impacted by these rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business by the SBA, if independently owned and operated.

14. *Auxiliary, Special Broadcast and other program distribution services*. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radio stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either \$6 million or less in annual receipts or \$12 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. The Commission, however, continues to believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either \$6 million for a radio station or \$12 million for a TV station). Furthermore, they do not meet the SBA's definition of a "small business concern" because they are not independently owned and operated.

15. *Private Operational Fixed Service*. Incumbent microwave services in the 12.2–12.7 GHz bands include common carrier, private operational fixed (POF), and broadcast auxiliary service (BAS) services. Presently, there are approximately 22,015 common carrier licensees, and approximately 61,670 POF licensees and broadcast auxiliary radio licensees in the microwave service. Inasmuch as the Commission has not yet defined a small business