

estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

54. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>175</sup> There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>176</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>177</sup>

55. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.<sup>178</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

56. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>179</sup> An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>180</sup> The SBA has approved these small business size standards.<sup>181</sup> The

auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

57. *Multipoint Distribution Service and Instructional Television Fixed Service.* Multipoint Distribution Service (MDS) 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).<sup>182</sup> In connection with the 1996 MDS auction, the Commission 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.<sup>183</sup> 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 definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, 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.<sup>184</sup> 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.<sup>185</sup> 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. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>186</sup> Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service

(LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>187</sup> The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>188</sup> An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>189</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>190</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

59. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>191</sup> In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.<sup>192</sup> A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>193</sup> We cannot

<sup>175</sup> This service is governed by 47 CFR 22.1001–22.1037.

<sup>176</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

<sup>177</sup> *Id.*

<sup>178</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>179</sup> See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

<sup>180</sup> *Id.*

<sup>181</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless

Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

<sup>182</sup> 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 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593 paragraph 7 (1995), 60 FR 36524 (July 17, 1995).

<sup>183</sup> 47 CFR 21.961(b)(1).

<sup>184</sup> 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October of 2002).

<sup>185</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513220 (issued October 2000).

<sup>186</sup> In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

<sup>187</sup> See Local Multipoint Distribution Service, Second Report and Order, 12 FCC Rcd 12545 (1997), 62 FR 23148 (Apr. 29, 1997).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>191</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fourth Report and Order, 9 FCC Rcd 2330 (1994), 59 FR 24947 (May 13, 1994).

<sup>192</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999), 64 FR 59656 (Nov. 3, 1999).

<sup>193</sup> *Id.*