

replacement spectrum for use by DOD and commercial flight test stations, which may shortly lose access to the 35 megahertz of spectrum at 1525–1535 MHz and 2320–2345 MHz.

#### B. Legal Basis

25. This action is authorized under Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

26. 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.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> 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).<sup>7</sup>

27. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>8</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>9</sup> “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.”<sup>10</sup> As of 1997, there were approximately 87,453 governmental entities in the United

States.<sup>11</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 and 1,498 have populations of 500,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

28. In the band 2025–2110 MHz, the proposals in this 4th NPRM would affect licensees in the Television Broadcast Auxiliary Service (BAS), the Local Television Transmission Service (LTTS), and the Cable Television Relay Service (CARS).

*Broadcast Auxiliary Service (BAS)* 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 stations). There are approximately 568 TV BAS licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals.

29. The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: For TV BAS, The Commission will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than \$12.0 million.<sup>12</sup> According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.<sup>13</sup> Of this total, 734 firms had annual receipts of \$9,999,999.00 or less and an additional 71 had receipts of \$10 million to \$24,999,999.00.<sup>14</sup> Thus, under this standard, the majority of firms can be considered small.

*Cable Antenna Relay Service (CARS)* There are nine CARS mobile licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than \$12.5 million.<sup>15</sup> According to

Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.<sup>16</sup> Of this total, 1,180 firms had annual receipts of \$9,999,999.00 or less, and an additional 52 firms had receipts of \$10 million to \$24,999,999.00.<sup>17</sup> Thus, under this standard, the majority of firms can be considered small.

*Local Television Transmission Service (LTTS)* There are 33 LTTS licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals. The Commission has not yet defined a small business with respect to local television transmission services. For purposes of this IRFA, The Commission will use the SBA’s definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.<sup>18</sup> According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.<sup>19</sup> 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.<sup>20</sup> Thus, under this size standard, the great majority of firms can be considered small.

30. In the band 2360–2390 MHz, the proposals are not expected to impact licensees of flight test stations, except to provide continued access to the band 2385–2390 MHz segment. That is, Federal and non-Federal Government licensees of flight test stations have long shared the band 2360–2390 MHz and our proposals would essentially return the band 2385–2390 MHz to its state prior to reallocation. The additional flexibility given to Federal Government users is not expected to impact licensees of flight test stations because this use would be on a secondary basis.

31. In the band 2390–2400 MHz, the proposals are not expected to greatly impact licensees in the amateur service or manufacturers of unlicensed PCS. Federal and non-Federal Government use of the band 2390–2395 MHz is expected to occur at only a limited number of aeronautical telemetry ranges in remote areas. The Commission reviewed its files and found that no

<sup>4</sup> 5 U.S.C. 604(a)(3).

<sup>5</sup> 5 U.S.C. 601(6).

<sup>6</sup> 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 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.”

<sup>7</sup> 15 U.S.C. 632.

<sup>8</sup> 5 U.S.C. 601(4).

<sup>9</sup> 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).

<sup>10</sup> 5 U.S.C. 601(5).

<sup>11</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

<sup>12</sup> 13 CFR 121.201, NAICS code 515120.

<sup>13</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Receipts Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 515120 (issued Oct. 2000).

<sup>14</sup> *Id.* The census data do not provide a more precise estimate.

<sup>15</sup> *Id.* at NAICS code 515120.

<sup>16</sup> *Id.* at NAICS code 515120.

<sup>17</sup> *Id.* The census data do not provide a more precise estimate.

<sup>18</sup> 13 CFR 121.201, NAICS code 517212.

<sup>19</sup> 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).

<sup>20</sup> *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.”