

band earth station applicants, and parties filing pleadings in response to these applications.

1. *DBS operators:* Because DBS provides subscription services, DBS falls within the SBA-recognized definitions of "Cable Networks" and "Cable and Other Program Distribution."¹¹ These definitions provide that small entities are ones with \$11.0 million or less in annual receipts.¹² Small businesses, *i.e.* ones with less than \$11.0 million in annual receipts, do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Because this is an established service, with limited spectrum and orbital resources for assignment, we estimate that no more than 15 entities will be Commission licensees providing these services. In addition, because of the high implementation costs and the limited spectrum resources we believe that none of the 15 licensees will be small entities. We expect that no small entities will be impacted by this rulemaking. Therefore, we certify that the proposed requirements of the Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

2. *DARS operators:* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit broadcast satellite operators. Therefore, the applicable definition of small entity is the definition under Small Business Administration (SBA) rules applicable to the Communications Services, Not Elsewhere classified. This definition provides that a small entity is one with \$11.0 million or less in annual receipts.¹³ There are only two SDARS providers authorized to provide service in the DARS spectrum band, XM Radio, Inc., and Sirius Satellite Radio, Inc. While neither has implemented nationwide service, both entities have financing of over \$100 million. In addition, the DARS licensees have significant partnership interests with large corporations: General Motors in XM Radio, Inc., and DaimlerChrysler in Sirius Satellite Radio. Because of the above and the high implementation and operating costs for SDARS systems, we do not believe either DARS licensee qualifies as a small entity.

3. *Fixed Satellite Transmit/Receive Earth Stations.* As of the adoption date of this NPRM, there are about 10480 authorized operational fixed satellite transmit/receive earth stations. Of these, approximately 6875 are routine earth stations in the conventional C-band, and about 3469 are routine earth stations in the conventional Ku-band. Thus, only about 136 fixed satellite service earth stations, or between 1 and 2 percent, are "non-routine" earth stations. Accordingly, we estimate that between 1 and 2 percent of future earth station license applicants will be "non-routine" applicants potentially affected by the rules proposed in the NPRM. We do not request or collect annual revenue information, and thus are unable to estimate the number of these earth stations that would constitute a small business under the SBA definition.

4. *Mobile Satellite Earth Stations.* As of the adoption date of this NPRM, we have issued about 32 licenses for mobile satellite service earth stations currently in operation. We do not request or collect annual revenue information, and thus are unable to estimate the number of these earth stations that would constitute a small business under the SBA definition.

5. *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 Small Business Administration (SBA) rules applicable to radio broadcasting stations (NAICS 513112) and television broadcasting stations (NAICS 513120). These definitions provide that a small entity is one with either \$6.0 million or less in annual receipts for a radio broadcasting station or \$12.0 million in annual receipts for a TV station. See 13 CFR 121.201. As of September 1999, there were 3,237 FM translators and boosters, 4913 TV translators.¹⁴ The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also

recognize that most translators and boosters 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 \$6.0 million for a radio station or \$12.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements: None of the proposed rules in this notice are expected to increase the reporting, record keeping and other compliance requirements of any party.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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. 5 U.S.C. 603(c).

We have attempted not to foreclose any option.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules: None.

Ordering Clauses

Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this Second Further Notice of Proposed Rulemaking in IB Docket No. 02-34 and Second Further Notice of Proposed Rulemaking in IB Docket No. 00-248 is hereby *adopted*.

The Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Second Further Notice of Proposed Rulemaking in IB Docket No. 02-34 and Second Further Notice of Proposed Rulemaking in IB Docket No. 00-248, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

¹¹ 13 CFR 121.201, North American Industry Classification Systems (NAICS) codes 513210 and 513220.

¹² 13 CFR 121.201, NAICS codes 513210 and 513220.

¹³ 13 CFR 121.201, NAICS Code 4899.

¹⁴ FCC News Release, *Broadcast Station Totals as of September 30, 1999*, No. 71831 (Jan. 21, 1999).