

106. In this *NPRM*, we propose the adoption of a “substantial service” construction benchmark during the initial license term for all wireless services that are licensed on a geographic area basis and that are subject to performance requirements. We also propose a substantial service safe harbor for rural areas. We also seek comment on whether we should adopt a geography-based benchmark for wireless services that are licensed on a geographic area basis and that currently do not have a geographic area coverage option. In addition, we seek comment on whether we should impose performance requirements in subsequent license terms after initial renewal. We also seek comment on measures that may be taken to increase power flexibility for licensed services. We also seek comment as to the relative effect on service in rural areas of the Commission’s use of small versus large geographic service areas.

107. In this *NPRM*, we seek comment on what, if any, regulatory or policy changes should be made to complement the Rural Utilities Service’s (RUS) financing programs. We also ask whether we should allow RUS to take security interests in spectrum licenses, provided that any security interest is expressly conditioned on the Commission’s prior approval of any assignment of the license from the licensee to the secured party. We also seek comment on whether we should eliminate the cellular cross-interest rule in Rural Service Areas with greater than three competitors, and we seek comment on what should constitute a “competitor.” In addition, we seek comment on whether clarifying the Commission’s policy on infrastructure sharing may promote service in rural areas. Finally, we propose ways of modifying our rules governing Rural Radiotelephone Service (RRS) and Basic Exchange Telephone Radio Systems (BETRS) to expand the use of these services, including removing eligibility restrictions on the use of BETRS spectrum.

Legal Basis

108. We tentatively conclude that we have authority under sections 4(i), 11, 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 161, 303(r), and 309(j), to adopt the proposals set forth in the *NPRM*.

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

109. 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).

110. Cellular Licensees. The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.” Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms out of a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA’s definition.

111. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA’s small business standard.

112. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In an order relating

to this service, we adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

113. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area