

Business Administration (SBA) in accordance with the Regulatory Flexibility Act. See 5 U.S.C. 603(a).

1. Need for, and Objectives of, the Proposed Rules

98. While the changes we adopt today in the *Report and Order* are an important step towards facilitating leasing of spectrum usage rights and enhancing the functioning of the secondary spectrum marketplace generally, we believe that there are additional measures that we might take to improve efficiency and promote access to a secondary spectrum market in order to ensure the greatest benefit to spectrum users and consumers. Thus, in the *Further NPRM*, we seek comment on: (1) How to encourage the development of information and clearinghouse mechanisms to facilitate secondary market transactions between licensees and new users in need of access to spectrum; (2) further streamlining of application processing for spectrum leasing, transfers of control, and license assignments; (3) expanding our spectrum leasing policies to additional services not encompassed within the *Report and Order*; (4) applying the new *de facto* control standard adopted for spectrum leasing to other issues and types of arrangements; and, (5) evaluating whether the spectrum leasing policies adopted in the *Report and Order* for designated entities should be altered in any respect. We discuss the potential impact of these on small entities in the paragraphs that follow.

2. Legal Basis

99. The potential actions on which comment is sought in this *Further NPRM* would be authorized under sections 1, 4(i), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r).

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

100. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that "the rule will not, if promulgated, have a significant impact on a substantial number of small entities." 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). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This IRFA describes and estimates the number of small entity licensees that may be affected if the proposals in this *Further NPRM* are adopted.

101. This *Further NPRM* could result in rule changes that, if adopted, would create new opportunities and obligations for Wireless Radio Services licensees and other entities that may lease spectrum usage rights from these licensees. When identifying small entities that could be affected by our new rules, we provide information describing auctions results, including the number of small entities that are winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we request commenters to estimate the number of small entities that may be affected by any rule changes resulting from this *Further NPRM*.

a. Wireless Radio Services

102. Many of the potential rules on which comment is sought in this *Further NPRM*, if adopted, would affect small entity licensees of the Wireless Radio Services identified herein:

103. *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 977 cellular and other wireless telecommunications firms that operated for the entire year in 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.

104. *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 977 such firms that operated for the entire year in 1997, 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.

105. *220 MHz Radio Service—Phase II Licensees*. 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