

require that fixed facilities operating in BAS channels 1 and 2 (1990–2008 MHz and 2008–2025 MHz, respectively) be relocated prior to the initiation of MSS service; and modify the channel plan for the frequency band to which BAS operations will be relocated. We otherwise deny the petitions relating to the 1990–2025 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to recognize the entry of new fixed and mobile service licensees in the 1990–2025 MHz band and the lack of negotiations to date between MSS and BAS licensees; to provide relief to fixed BAS facilities that would otherwise have to cease operation for three years or more; and to provide a new BAS channel plan that promotes efficiencies in equipment manufacture and operation by incorporating uniform channel sizes. For the 2180–2200 MHz band, we adopt a date certain from which FS–MSS negotiations and the sunset date run, and clarify that a transfer or assignment will not affect a FS licensee's relocation rights. We otherwise deny the petitions relating to the 2180–2200 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to provide clarity to the relocation process, and serve to reduce the notification requirements for MSS licensees regarding initiation of the negotiation period that were required under the previous relocation rules.

44. Collectively, the rules we adopt in the *Third Report and Order* and *Third Memorandum Opinion and Order* are designed to allow for the rapid provision of MSS in the 2 GHz band by resolving outstanding issues relating to the relocation of incumbent users in the 1990–2025 MHz and 2180–2200 MHz bands. These actions are based on our response to petitions for reconsideration and clarification filed in the docket, in conjunction with the proposals we set forth in the *Notice of Proposed Rulemaking* in IB Docket No. 01–185 and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order* and *Further Notice of Proposed Rulemaking* in ET Docket No. 00–258.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

45. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

46. 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.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ 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).¹²

47. *Fixed Microwave Services.* Microwave services include both common carrier¹³ and private-operational fixed¹⁴ services. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, of which these fixed microwave services are a part, and which consists of all such firms having 1,500 or fewer employees.¹⁵ According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year.¹⁶ Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.¹⁷ Thus, under this size standard,

⁹ 5 U.S.C. 604(a)(3).

¹⁰ 5 U.S.C. 601(6).

¹¹ 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*.”

¹² 15 U.S.C. 632.

¹³ 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

¹⁴ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹⁵ 13 CFR 121.201, NAICS code 517212 (changed from 513322 in October 2002).

¹⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513322 (issued October 2000).

¹⁷ Id. The census data do not provide a more precise estimate of the number of firms that have

the majority of firms can be considered small.

48. *Broadcast Auxiliary Service (BAS).* 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). 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: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than \$12.0 million;¹⁸ (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than \$6 million;¹⁹ (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

49. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁰ must be included.²¹ Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).²² Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of \$6 million or less. We note,

1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

¹⁸ 13 CFR 121.201, NAICS code 515120.

¹⁹ Id. NAICS code 515112.

²⁰ “Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 121.103(a)(1).

²¹ “SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size.” 13 CFR 121.103(a)(4).

²² FCC News Release, “Broadcast Station Totals as of September 30, 2002” (Nov. 6, 2002).