

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This proposed rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The action merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 *note*, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for

failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the NTTAA do not apply.

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 30, 2003.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 03-17338 Filed 7-8-03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 03-128; FCC 03-125]

#### Nationwide Programmatic Agreement

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission ("FCC" or "Commission") seeks comment regarding a draft nationwide programmatic agreement that would tailor and streamline procedures for review of certain undertakings for communications facilities under the National Historic Preservation Act of 1966 ("NHPA"). In addition, the Commission seeks comment on certain transitional issues regarding the treatment of NHPA proceedings pending at the time the draft nationwide programmatic agreement is adopted.

**DATES:** Submit comments on or before August 8, 2003. Submit reply comments on or before September 8, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See

**SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:**  
Frank Stilwell, Wireless  
Telecommunications Bureau, (202) 418-1892.

**SUPPLEMENTARY INFORMATION:** This is a summary of a *Notice of Proposed Rulemaking (NPRM)* in WT Dkt. No. 03-128, FCC 03-125, adopted May 27, 2003, and released June 9, 2003. The

Nationwide Agreement, upon amendment and final agreement, will tailor and streamline procedures for review of certain Undertakings for communications facilities under section 106 of the National Historic Preservation Act of 1966 ("NHPA"), 16 U.S.C. 470 *et seq.* The *NPRM* also proposes to revise a related provision of the Commission's rules and initiate the use of two new FCC forms for Commission applicants, licensees and tower owners. The full text of the *NPRM* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

#### Paperwork Reduction Act

This *NPRM* contains a new information collection as described in Section B of the Initial Regulatory Flexibility Analysis below. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in the *NPRM* as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. It will be submitted to the OMB for review under Section 3507(d) of the PRA. Public, OMB, and other agency comments are due September 8, 2003. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information of the respondents, including the use of automated collection techniques or other forms of information technology.

A copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1C-804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at [Judith-bherman@fcc.gov](mailto:Judith-bherman@fcc.gov), and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW.,

Washington, DC 20503 or via the Internet to [kim.johnson@omb.eop.gov](mailto:kim.johnson@omb.eop.gov).  
**OMB Control Number:** 3060-XXXX.  
**Title:** Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.

**Form:** FCC Forms 620 and 621.

**Type of Review:** New collection.

**Respondents:** Business or other for-profit, Individuals or household, Not-for-profit institutions, and State, Local or Tribal Government.

**Number of Respondents:** 12,000.

**Frequency of Response:**

Recordkeeping, On occasion reporting required, Third party disclosure.

**Total Annual Burden:** 73,800 hours.

**Needs and Uses:** This data is used by FCC staff, State Historic Preservation Officers ("SHPO"), Tribal Historic Preservation Officers ("THPO"), and the Advisory Council of Historic Preservation ("AHP") to take such action as may be necessary to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing in the National Register as directed by section 106 of the NHPA and the Commission's Rules.

## I. Background

1. In this *Notice of Proposed Rulemaking* ("NPRM"), we seek comment on a draft Nationwide Programmatic Agreement ("Nationwide Agreement") among the Federal Communications Commission ("Commission"), the Advisory Council on Historic Preservation ("Council"), and the National Conference of State Historic Preservation Officers ("Conference") that would tailor and streamline procedures for review of certain Undertakings for communications facilities under the National Historic Preservation Act of 1966 ("NHPA"), as well as a related revision of the Commission's rules. See 16 U.S.C. 470 *et seq.* An "Undertaking" subject to review under the NHPA is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." 16 U.S.C. 470w(7). The proposed Nationwide Agreement would incorporate an existing Programmatic Agreement that excludes most collocations of antennas on existing structures from routine historic preservation review. See 16 FCC Rcd

5574 (Wireless Tel. Bur. 2001). In November 2001, representatives of the Commission, Council and Conference, American Indian tribes, the communications industry, and historic preservation consultants, as part of a working group sponsored by the Council, began drafting a proposed Nationwide Agreement. Consistent with § 800.14(b) of the Council's rules, 36 CFR 800.14(b), and § 1.1307(a)(4) of the Commission's rules, 47 CFR 1.1307(a)(4), the draft Nationwide Agreement is intended to tailor the section 106 review, 16 U.S.C. 470f, in the communications context so as to improve compliance and streamline the review process for construction of towers and other Commission Undertakings. The Commission's environmental rules currently treat construction of licensed communications facilities as "Undertakings." An illustrative list of Commission activities in relation to which Undertakings covered by the draft Nationwide Agreement may occur is attached. See Attachment 2 to Attachment A. At the same time, the parties intend to advance and preserve the goal of the NHPA to protect historic properties, including historic properties to which Indian tribes and Native Hawaiian organizations ("NHOs") attach religious and cultural significance.

## II. Discussion

2. We request comment on the draft Nationwide Agreement. See Attachment A to this NPRM. In particular, we seek comment on several issues that members of the Working Group have specifically raised during the course of negotiating the current draft Nationwide Agreement. For example, members of the Working Group have proposed certain modifications to the language in the draft Nationwide Agreement regarding exclusion of certain Undertakings from routine section 106 review. See Draft Nationwide Agreement section III. These and other issues on which the members of the Working Group did not reach full consensus are indicated in footnotes throughout the draft Nationwide Agreement. We seek comment on these and any other issues related to the draft Nationwide Agreement, including issues related to the potential economic impact of the draft Nationwide Agreement on small entities.

3. We also request comment regarding how the draft Nationwide Agreement should be crafted consistent with the Commission's government-to-government relationship with and trust responsibility to federally recognized

Indian tribes (including Alaska Native Villages), See In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement, 16 FCC Rcd 4078, 4080 (2000), and statutory and regulatory provisions governing the Commission's relationship with such Indian tribes and NHOs, See 16 U.S.C. 470a(d); 36 CFR 800.2(c)(2); 47 CFR 1.1308(b) Note (when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe). Several issues in this regard have been brought to our attention both through tribal participation in the Working Group and through Commission staff consultation with the United South and Eastern Tribes, Inc. For instance, do the NHPA, the Council's rules or other governing principles require notification or more, prior to construction, to Indian tribes and NHOs with historic associations to the area in which an Undertaking is to occur, even though the parties to a Nationwide Agreement identify certain classes of Undertakings as unlikely to have an effect on historic properties and therefore excluded from routine review? See Draft Nationwide Agreement at section III.B Similarly, should the Nationwide Agreement prescribe procedures for licensees and applicants to invite the participation of Indian tribes and NHOs in the section 106 process, or should it recommend that, as an alternative to direct Commission consultation on each site, the parties implement alternative processes pursuant to guidance to be provided separately by the Commission after consultation with Indian tribes and NHOs? *Id.* section IV, Alternatives A and B. We seek comment on these issues.

4. In addition, we request comment regarding the treatment of section 106 reviews that are in process at the time a Nationwide Agreement becomes effective. For example, to what extent should the timelines, processes and standards in a Nationwide Agreement replace the Council's rules (36 CFR part 800) for section 106 reviews that are pending before a SHPO/THPO, or at other stages in the process, on the date that a Nationwide Agreement goes into effect? We seek comment on this and other transitional issues.

5. Finally, in conjunction with the proposed execution of the Nationwide Agreement, we propose to revise § 1.1307(a)(4) of our rules.<sup>1</sup> Under § 1.1307(a)(4), applicants are required to evaluate whether their proposed

<sup>1</sup> 47 CFR 1.1307(a)(4).

facilities may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places and, if so, to file an Environmental Assessment and obtain a Finding of No Significant Impact (or procure completion by the Commission of an Environmental Impact Statement) prior to construction.<sup>2</sup> The Note to § 1.1307(a)(4) provides guidance as to how applicants should perform this evaluation consistent with the NHPA. In order to make clear that the procedures in the Nationwide Agreement will be binding on applicants, and that non-compliance with these procedures would subject a party to potential enforcement action by the Commission, we propose to amend § 1.1307(a)(4) by removing the Note and adding the following language to the text of 47 CFR 1.1307(a)(4):

The National Register is updated in the **Federal Register**. To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Appendix B to Part 1 of this Chapter, and the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, Appendix C to Part 1 of this Chapter.

We seek comment on this proposed revision to our rules. The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas may be found at 66 FR 17554, April 2, 2001.

### III. Procedural Matters

#### A. Ex Parte Rules—Permit-But-Disclose Proceeding

6. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. *Id.* §§ 1.1200–1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See Id.* § 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission’s rules.

<sup>2</sup> *Id.*; see also 47 CFR 1.1308, 1.1311.

*See Id.* § 1.1206(b). Under the Council’s rules, the Council and Conference must be parties to the Nationwide Agreement. Therefore, for purposes of the Commission’s *ex parte* rules, in this proceeding we shall treat presentations from these entities and their staffs as exempt presentations under 47 CFR 1.1204(a)(5).

#### B. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>3</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 7 of the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>4</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>5</sup>

#### C. Need for, and Objectives of, the *NPRM*

8. The *NPRM* seeks comment on a draft Nationwide Programmatic Agreement (“Nationwide Agreement”) among the Federal Communications Commission (“Commission”), the Advisory Council on Historic Preservation (“Council”) and the National Conference of State Historic Preservation Officers (“Conference”). The Nationwide Agreement would tailor and streamline procedures for review of certain Undertakings for communications facilities under the National Historic Preservation Act of 1966 (“NHPA”).<sup>6</sup> In November 2001, representatives of the Commission, Council, Conference, American Indian tribes, the communications industry, and historic preservation consultants, as part of a working group sponsored by the Council, began drafting a proposed Nationwide Agreement. Consistent with the Council’s rules, the draft Nationwide Agreement is intended to

<sup>3</sup> See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Public Law No. 104–121, Title II, 110 Stat. 857 (1996).

<sup>4</sup> See 5 U.S.C. 603(a).

<sup>5</sup> See 5 U.S.C. 603(a).

<sup>6</sup> See 16 U.S.C. 470 et seq.

tailor the section 106 review<sup>7</sup> in the communications context so as to improve compliance and streamline the review process for construction of towers and other Commission Undertakings.

9. The Commission proposes to adopt the Nationwide Agreement in order to clarify and streamline the obligations<sup>8</sup> of its regulatees<sup>9</sup> (“Applicants”) with respect to assisting the Commission in meeting its responsibilities under the NHPA. For example, the draft Nationwide Agreement would exclude from routine Section 106 review<sup>10</sup> certain Undertakings that are unlikely to affect historic properties.<sup>11</sup> For those Undertakings that would remain subject to review, the draft Nationwide Agreement would specify standards and procedures that Applicants shall follow when completing the section 106 review. For example, the Nationwide Agreement sets forth the manner in which Applicants should seek participation of Indian Tribes and Native Hawaiian Organizations; should seek tribal consultation; should seek public participation and consulting parties; should identify, evaluate, and assess effects on historic properties;

<sup>7</sup> Section 106 of the NHPA, codified at 16 U.S.C. 470f, requires federal agencies to take into account the effects of certain of their undertakings on historic properties, listed or eligible for inclusion in the National Register of Historic Places, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertakings.

<sup>8</sup> See 47 CFR 1.1307(a)(4).

<sup>9</sup> Commission regulatees, in this instance, include licensees, tower owners, and applicants for authorization to construct facilities in the wireless, media, and satellite services.

<sup>10</sup> Commission Applicants are required to review whether a proposed tower or antenna may affect historic properties that are either listed or eligible for inclusion in the National Register, including properties that may affect sites of religious or cultural importance to Indian tribes or Native Hawaiian organizations. To do this, Applicants must begin the section 106 process by first presenting documentation of the review to the State Historic Preservation Officer and any relevant Tribal Historic Preservation Officers.

<sup>11</sup> An “Undertaking” subject to review under the NHPA is defined as “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.” 16 U.S.C. 470w(7). The Commission’s environmental rules currently treat construction of licensed communications facilities as “Undertakings.” An illustrative list of Commission activities in relation to which Undertakings covered by the draft Nationwide Agreement may occur is provided here as Attachment 2 to Appendix A (“Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission”).

and, should submit materials for review by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Commission. In addition, the draft Nationwide Agreement includes provisions for emergency situations;<sup>12</sup> inadvertent or post-review discovery of adverse effects on historic properties; construction prior to completion of the section 106 process; public comments; and amendment or termination of the Agreement. Finally, the Nationwide Agreement proposes to prescribe two standardized forms for making submissions to the SHPO or THPO.

10. The Commission further proposes to amend § 1.1307(a)(4) in order to make clear that the procedures in the Nationwide Agreement will be binding on applicants, and that non-compliance with these procedures would subject a party to potential enforcement action by the Commission. Specifically, § 1.1307(a)(4) would be amended to specify that in order to ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register,<sup>13</sup> an Applicant shall follow the procedures set forth in the rules of the Council, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 66 FR 17554, April 2, 2001, and this Nationwide Agreement.

#### D. Legal Basis

11. We tentatively conclude that we have authority under sections 1, 4(i), 301, 303(q), 303(r), 309(a), 309(j), and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(q), 303(r), 309(a), 309(j), and 319, section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, and § 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b), to adopt the proposals set forth in the *NPRM*.

<sup>12</sup> The draft Nationwide Agreement outlines the manner in which applicants should complete section 106 reviews in those circumstances when emergency service is needed in a specific location.

<sup>13</sup> "Listed" properties are those properties for which an application for inclusion in the National Register of Historic Places ("National Register") has been approved. Under § 800.16(l)(2) of the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.16(l)(2), the term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Keeper of the National Register in accordance with applicable regulations of the Secretary of the Interior and all other properties that meet the National Register criteria. Information on the characteristics of properties that meet these criteria is available at the National Register web site: <http://www.cr.nps.gov/nr>.

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

12. 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 proposed rules.<sup>14</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>15</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>16</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>17</sup>

13. The draft Nationwide Agreement and *NPRM* could result in rule changes that, if adopted, would impose requirements on entities that may construct facilities that may significantly affect the environment under § 1.1307 of the Commission's rules. This includes various classes of Commission licensees as well as non-licensee tower owners. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from the *NPRM*.

#### Wireless Telecommunications

14. *Cellular Licensees*. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."<sup>18</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>19</sup> According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more

<sup>14</sup> 5 U.S.C. 604(a)(3).

<sup>15</sup> 5 U.S.C. 601(6).

<sup>16</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>17</sup> 15 U.S.C. 632.

<sup>18</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>19</sup> *Id.*

employees.<sup>20</sup> Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition.

15. *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 definition under the SBA rules applicable to "Cellular and Other Wireless Telecommunication" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>21</sup> According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.<sup>22</sup> If this general ratio continues in 2003 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's small business standard.

16. *220 MHz Radio Service—Phase II Licensees*. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 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.<sup>23</sup> 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

<sup>20</sup> U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 517212 (October 2000).

<sup>21</sup> 13 CFR 121.201.

<sup>22</sup> U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 517212 (October 2000).

<sup>23</sup> Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

three years.<sup>24</sup> 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.<sup>25</sup> The SBA has approved these small size standards.<sup>26</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>27</sup> 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, 683 were sold.<sup>28</sup> Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>29</sup>

**17. 700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, we adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>30</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>31</sup> Additionally, a “very small business” is 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.<sup>32</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>33</sup> Of the 104 licenses auctioned, 96 licenses were

sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>34</sup>

**18. 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings [EAGs]) commenced on August 27, 2002, and closed on September 18, 2002.<sup>38</sup> Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.

**19. Upper 700 MHz Band Licenses.** The Commission released a Report and Order, authorizing service in the upper 700 MHz band.<sup>39</sup> No auction has been held yet.

**20. Private and Common Carrier Paging.** In the *Paging Second Report*

and *Order*, we adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>40</sup> 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.<sup>41</sup> The SBA has approved this definition.<sup>42</sup> An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>43</sup> Of the 985 licenses auctioned, 440 were sold. 57 companies claiming small business status won licenses. An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001.<sup>44</sup> Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. At present, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses.

According to the most recent *Trends in Telephone Service*, 608 carriers reported that they were engaged in the provision of either paging or “other mobile” services.<sup>45</sup> Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

**21. Broadband Personal Communications Service (PCS).** The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The

<sup>24</sup> *Id.* at paragraph 291.

<sup>25</sup> *Id.*

<sup>26</sup> See Letter to Daniel Phythypon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>27</sup> See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>28</sup> FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses after Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

<sup>29</sup> “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

<sup>30</sup> See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99–168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

<sup>31</sup> *Id.* at paragraphs 106–108.

<sup>32</sup> *Id.* at paragraphs 106–108.

<sup>33</sup> See generally, “220 MHz Service Auction Closes: Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses,” *Public Notice*, DA 98–2143 (rel. October 23, 1998).

<sup>34</sup> “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC 4590 (WTB 2001).

<sup>35</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), GN Docket No. 01–74, *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>36</sup> *Id.* at paragraph 172.

<sup>37</sup> *Id.* at paragraph 172.

<sup>38</sup> See “Lower 700 MHz Band Auction Closes,” 17 FCC Rcd 17272 (2002).

<sup>39</sup> Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99–168, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

<sup>40</sup> Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Second Report and Order*, 12 FCC Rcd 2732, 2811–2812, paragraphs 178–181 (*Paging Second Report and Order*); see also Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, paras. 98–107 (1999).

<sup>41</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, paragraph 179.

<sup>42</sup> See Letter to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>43</sup> See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>44</sup> See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>45</sup> See *Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (May 2002).

Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>46</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>47</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>48</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.<sup>49</sup> On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 113 winning bidders in the re-auction, for a total of 296 small entity broadband PCS providers as defined by the SBA small business standards and the Commission’s auction rules.

22. *Narrowband PCS.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>50</sup> Through these auctions, the Commission has awarded a total of 41

<sup>46</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824, paragraphs 57–60 (1996); see also 47 CFR 24.720(b).

<sup>47</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, paragraph 60 (1996).

<sup>48</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Small Business Administration, dated December 2, 1998.

<sup>49</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. January 14, 1997).

<sup>50</sup> In the Matter of Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456, 10476, paragraph 40 (May 18, 2000).

licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>51</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>52</sup> The SBA has approved these small business size standards.<sup>53</sup> There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

23. *800 and 900 MHz Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b) (1), the Commission has established a small business size standard for purposes of auctioning SMR licenses in the 900 MHz band, the upper 200 channels of the 800 MHz band, and the lower 230 channels of the 800 MHz band as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years.<sup>54</sup> The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.<sup>55</sup> Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the

<sup>51</sup> *Id.* at 15 FCC Rcd 10476, paragraph 40.

<sup>52</sup> *Id.* at 15 FCC Rcd 10476, paragraph 40.

<sup>53</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, Small Business Administration (Dec. 2, 1998).

<sup>54</sup> 47 CFR 90.814(b)(1).

<sup>55</sup> See Letter to Tom Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

\$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.

24. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small business. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations on the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by SBA.

25. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For purposes of this IRFA, we will use the SBA’s definition applicable to radiotelephone (wireless) companies—that is, an entity with no more than 1,500 persons.<sup>56</sup>

26. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission’s 1994

<sup>56</sup> 13 CFR 121.201.

Annual Report on PLMRs<sup>57</sup> indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

**27. Fixed Microwave Services.**

Microwave services include common carrier,<sup>58</sup> private-operational fixed,<sup>59</sup> and broadcast auxiliary radio services.<sup>60</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—that is, an entity with no more than 1,500 persons.<sup>61</sup> We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

**28. Public Safety Radio Services.**

Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>62</sup>

<sup>57</sup> Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

<sup>58</sup> 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's rules).

<sup>59</sup> 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.

<sup>60</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. See 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>61</sup> 13 CFR 121.201.

<sup>62</sup> With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15 through 90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are

There are a total of approximately 127,540 licensees within these services. Governmental entities<sup>63</sup> as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>64</sup>

**29. Offshore Radiotelephone Service.**

This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>65</sup> There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

**30. Wireless Communications**

**Services.** This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.<sup>66</sup> The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic

approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

<sup>63</sup> 47 CFR 1.1162.

<sup>64</sup> 5 U.S.C. 601(5).

<sup>65</sup> This service is governed by subpart I of part 22 of the Commission's rules. See 47 CFR 22.1001 through 22.1037.

<sup>66</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

area WCS licensees affected includes these eight entities.

**31. 39 GHz Service.** The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>67</sup> An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>68</sup> These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

**32. Multipoint Distribution Service.**

MDS involves a variety of transmitters, which are used to relay programming to the home or office.<sup>69</sup> Hundreds of stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended.<sup>70</sup> For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less).<sup>71</sup> We are unable to estimate the number of pre-auction MDS licensees that are small businesses. The Commission has defined "small entity" for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>72</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>73</sup> The MDS

<sup>67</sup> See In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

<sup>68</sup> *Id.*

<sup>69</sup> For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS). For the number of incumbents and auction winners who qualify, see In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, FCC 03–56 (rel. April 2, 2003) ("MDS/ITFS NPRM and MO&O").

<sup>70</sup> 47 U.S.C. 309(j).

<sup>71</sup> See 13 CFR 121.201.

<sup>72</sup> 47 CFR 1.2110(a)(1).

<sup>73</sup> See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing

auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business, but only 42 remain small businesses.

**33. Local Multipoint Distribution Service.** The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>74</sup> An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>75</sup> These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.<sup>76</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses includes the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

**34. 218–219 MHz Service.** The first auction of 218–219 MHz spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 557 were won by 178 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>77</sup> In the 218–

Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995).

<sup>74</sup> See Local Multipoint Distribution Service, Second Report and Order, 62 FR 23148, April 29, 1997.

<sup>75</sup> Id.

<sup>76</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>77</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, Fourth Report and Order, 59 FR 24947, May 13, 1994.

219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.<sup>78</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>79</sup> We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses by these revised rules.

**35. 24 GHz Service.** The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. We believe that there are only two licensees in the 24 GHz band.

**36. Location and Monitoring Service (LMS).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$15 million.<sup>80</sup> A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years

<sup>78</sup> In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656, November 3, 1999.

<sup>79</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656, November 3, 1999.

<sup>80</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Second Report and Order, 13 FCC Rcd 15182 paragraph 20 (1998); see also 47 CFR 90.1103.

not to exceed \$3 million.<sup>81</sup> These definitions have been approved by the SBA.<sup>82</sup> An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We conclude that the number of LMS licensees affected by this NPRM includes these four entities. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

#### Media Services (Broadcast & Cable)

**37. Commercial Television Services.** The SBA defines a television broadcasting station that has no more than \$12.0 million in annual receipts as a small business.<sup>83</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>84</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>85</sup> Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>86</sup>

**38. There were 1,695 full-service television stations operating in the United States as of December 2001.<sup>87</sup>** According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.<sup>88</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>89</sup> Thus, under this

<sup>81</sup> Id.

<sup>82</sup> See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Feb. 22, 1999).

<sup>83</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

<sup>84</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

<sup>85</sup> Id.; see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*, at 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

<sup>86</sup> 1992 Census, Series UC92–S–1, at Appendix A–9.

<sup>87</sup> FCC News Release, Broadcast Station Totals as of December 31, 2001 (released May 21, 2002).

<sup>88</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

<sup>89</sup> Id. The census data do not provide a more precise estimate.

standard, the majority of firms can be considered small.

#### Commercial Radio Services

39. The SBA defines a radio broadcasting station that has no more than \$6 million in annual receipts as a small business.<sup>90</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>91</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>92</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>93</sup> According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year.<sup>94</sup> Of this total 4,265 had annual receipts of \$4,999,999.00 or less, and an additional 103 firms had receipts of \$5 million to \$9,999,999.00.<sup>95</sup> Thus, under this standard, the great majority of firms can be considered small.

40. *Cable Systems.* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>96</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.<sup>97</sup> Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

41. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an

affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds \$250,000,000."<sup>98</sup> The Commission has determined that there are 67,700,000 subscribers in the United States.<sup>99</sup> Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>100</sup> Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450.<sup>101</sup> Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

42. *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. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations. The SBA defines a television broadcasting station that has no more than \$12.0 million in annual receipts as a small business,<sup>102</sup> and it defines a radio broadcasting station that has no more than \$6 million in annual receipts as a small business.<sup>103</sup>

43. The Commission estimates that there are approximately 3,600 translators and boosters. The Commission 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 that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial 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 (either \$5 million for a radio station or \$10.5 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.

#### Satellite Services

44. The Commission has not developed a small business size standard applicable to licensees in the international services. However, the SBA has developed a size standard for a small business within the category of Other Telecommunications. Under that SBA size standard, such a business is small if it has \$12.5 million or less in average annual receipts.<sup>104</sup> According to Census Bureau data for 1997, there were a total of 439 other communications services providers, operating for the entire year.<sup>105</sup> Of the 439, a total of 430 had annual receipts of less than \$10.0 million. Consequently, the Commission estimates that most Other Telecommunications providers are small entities that may be affected by the rules and policies adopted herein.

45. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

46. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

47. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary

<sup>90</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 515112.

<sup>91</sup> 1992 Census, Series UC92-S-1, at Appendix A-9.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 515112.

<sup>95</sup> *Id.* The census data do not provide a more precise estimate.

<sup>96</sup> 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995). 13 CFR 121.201, North American Industry Classification System (NAICS) code 515210.

<sup>97</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>98</sup> 47 U.S.C. 543(m)(2).

<sup>99</sup> FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01-158 (January 24, 2001).

<sup>100</sup> 47 CFR 76.1403(b).

<sup>101</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>102</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 515120.

<sup>103</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 515112.

<sup>104</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517410.

<sup>105</sup> *Id.*

basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single “blanket” application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

48. *Mobile Satellite Stations.* There are 21 licensees. On February 10, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking* allowing licensees in the Mobile Satellite Services to use their spectrum for Ancillary Terrestrial Communications (ATC).<sup>106</sup> Licensees may construct towers to provide ATC service. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

49. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

50. *Digital Audio Radio Services (DARS).* Commission records show that there are 2 Digital Audio Radio Services authorizations. We do not request nor collect annual revenue information, and, therefore, we cannot estimate the number of small businesses under the SBA definition.

#### Non-Licensee Tower Owners

51. The Commission’s rules require that any entity proposing to construct an antenna structure 200 feet or higher or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854.<sup>107</sup> For this and other reasons, non-licensee tower owners may be subject to the requirements proposed in the NPRM and draft Nationwide Programmatic Agreement. As of April 2003, approximately 92,855 towers were included in the Antenna Structure Registration database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep

information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.<sup>108</sup> Moreover, the SBA has not developed a size standard for small businesses in the category “Tower Owners.” Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA’s definition for cellular and other wireless telecommunications services.<sup>109</sup>

#### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. Specific requirements that the draft Nationwide Agreement would impose on Applicants include, first, determining whether an exclusion applies to their proposed construction project, thereby obviating the need to submit Section 106 materials to the SHPO/THPO.<sup>110</sup> Applicants should maintain records to verify the applicability of any exclusion.<sup>111</sup> If alternative language proposed by the Navajo Nation is adopted, Applicants will also be required to provide notification of most excluded projects to potentially affected Indian tribes.<sup>112</sup> If no exclusion applies, the language discussed in the Telecommunications Working Group includes specific steps that Applicants shall follow to identify Indian tribes and Native Hawaiian Organizations (NHOs) that may attach religious and cultural significance to potentially affected historic properties. These steps offer those tribes and NHOs a full opportunity to participate in the process; to refer Indian tribes’ requests for government-to-government consultation to the Commission; and to maintain confidentiality of private or sensitive information.<sup>113</sup>

53. The draft Nationwide Agreement also sets forth required procedures for seeking local government and public participation; considering public comments and forwarding them to the

SHPO/THPO; and for identifying consulting parties.<sup>114</sup> In addition, the draft Nationwide Agreement sets forth standards for applicants to apply in defining the area of potential effects (APE); in identifying Historic Properties within the APE; in evaluating the historic significance of identified properties; and in assessing the effects of the Undertaking on Historic Properties.<sup>115</sup> Once identification, evaluation, and assessment are complete, the draft Nationwide Agreement requires Applicants to provide the SHPO/THPO and consulting parties with a Submission Packet including the appropriate form, which requires specified information about the Applicant, the project, and its review.<sup>116</sup> The draft Nationwide Agreement also sets forth procedures for Applicants to follow upon receiving certain responses from the SHPO/THPO. It also sets forth procedures for developing Memoranda of Agreement to mitigate adverse effects.<sup>117</sup> Finally, the draft Nationwide Agreement prescribes procedures for Applicants to follow in the event of inadvertent or post-review discoveries,<sup>118</sup> and sets forth potential measures that the Commission may require Applicants to take in response to a complaint alleging construction prior to compliance with section 106.<sup>119</sup>

#### E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its 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.<sup>120</sup>

55. In general, the alternative of exempting small entities from the requirements proposed in the NPRM

<sup>106</sup> In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, FCC 03-15 (rel. Feb 10, 2003).

<sup>107</sup> 47 CFR 17.4.

<sup>108</sup> Nationwide Agreement, section III.A.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*, section III.B.

<sup>111</sup> *Id.*, IV.D.—IV.H., IV.J, Alternative A.

<sup>112</sup> *Id.*, Alternative B, proposed by the United South and Eastern Tribes, Inc., encourages Indian tribes and NHOs to agree to protocols for relations between applicants and tribes or NHOs in lieu of direct government consultation, but does not specify such protocols.

<sup>114</sup> *Id.*, Part V.

<sup>115</sup> *Id.*, Part VI. To a substantial extent, these standards are taken directly from the Council’s rules.

<sup>116</sup> *Id.*, section VII.A.1. and Attachments 3 and 4.

<sup>117</sup> *Id.*, sections VII.B.3, VII.C.2, VII.C.3, VII.C.6, and VII.D.

<sup>118</sup> *Id.*, Part IX.

<sup>119</sup> *Id.*, section X.C.

<sup>120</sup> 5 U.S.C. 603(c).

and draft Nationwide Agreement was rejected. The NHPA requires that all Federal Undertakings be evaluated for their potential effects on districts, sites, buildings, structures or objects, which are significant in American history, architecture, archeology, engineering or culture, and which are listed, or are eligible for listing, in the National Register of Historic Places. Neither the NHPA nor the Council's rules contemplates any exemption from review depending on the size or resources of the non-federal entity which initiates the undertaking. The impact of the requirements proposed in the draft Nationwide Agreement will be the same on all entities whether large or small. All of these projected reporting, record keeping, and other compliance requirements will be imposed in the same way, on all entities to be affected. Therefore, no special or undue burden will be placed on small entities.

56. However, because of our concern with minimizing burden on small entities, and as an alternative to stricter and potentially more burdensome regulation, several provisions of the draft Nationwide Agreement are expected to reduce economic burdens on small entities. For example, the exclusions from routine Section 106 review listed in Part III of the draft Nationwide Agreement will relieve Applicants, whether large or small, from the burden of performing unnecessary review for projects that are unlikely to affect historic properties. The standards set forth in Part VI will add predictability to the process, and the procedures and the time frames for review in Part VII will reduce costly uncertainty and delay. In addition, the prescribed forms will facilitate preparation of a sufficient submission packet on the first effort, thereby avoiding the need for costly and time-consuming resubmissions, which may be especially burdensome for small entities.

57. We note that Applicants routinely retain consultants to perform most of the steps associated with section 106 reviews. We anticipate that the use of consultants to perform these tasks would continue to be prevalent under the Nationwide Agreement. Applicants will typically comply with the standards and procedures set forth in the draft Nationwide Agreement by using consultants to perform specialized tasks due to their relative cost effectiveness and efficiency in completing section 106 reviews. We believe that the rules proposed for adoption herein will in no way serve to impose any requirements on small entities that would make the use of

consultants more burdensome than would normally be the case.

58. The draft Nationwide Agreement may impose specific burdens on small entities in some instances. However, we believe these burdens are the minimum necessary to accomplish the draft Nationwide Agreement's purpose. Thus, the Commission, after discussion with the members of the Working Group, believes that the forms include the minimum information necessary for appropriate review by a SHPO, THPO, or the Commission. Similarly, the provisions for tribal and public participation (Parts IV and V) are intended to embody the least burdensome procedures on applicants that will afford these parties a complete and legally sufficient opportunity to participate in the process.<sup>121</sup> The submission and review processes set forth in Part VII have also been developed with the goal of reducing burdens insofar as possible.

59. The *NPRM* seeks comment on the draft Nationwide Agreement generally, including issues related to its potential economic impact on small entities.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

60. None. The draft Nationwide Agreement would modify and supplement the procedures set forth in the rules of the Council,<sup>122</sup> as expressly contemplated in those rules.<sup>123</sup>

#### *G. Comment Dates*

61. Pursuant to § 1.415 and § 1.419 of the Commission's rules, *See Id.* 1.415, 1.419, interested parties may file comments on or before August 8, 2003, and may file reply comments on or before September 8, 2003. All filings should refer to Docket No. 03-128. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket numbers, which in this instance is Docket No. 03-

128. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Or you may obtain a copy of the SCII Electronic Transmittal Form (FORM-ET) at <http://www.fcc.gov/e-file/email.html>.

62. Parties who choose to file by paper must file an original and six copies of each, and are hereby notified that effective December 18, 2001, the Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

63. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, this is a reminder that, effective October 18, 2001, the Commission discontinued receiving hand-delivered or messenger-delivered filings for the Secretary at its headquarters location at 445 12th Street, SW., Washington, DC 20554.

64. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission at 445 12th Street, SW., Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

<sup>121</sup>We point out that the *NPRM* seeks comment on two alternative sets of provisions for tribal participation and consultation that reflect different views of what is required in this regard.

<sup>122</sup>36 CFR part 800.

<sup>123</sup>36 CFR 800.14(b).

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

65. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket numbers, in this case, Docket No. 03-128), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554.

66. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at *qualexint@aol.com*. Commission staff will forward copies of all comments received to the Council and the Conference.

67. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with

§ 1.48 and all other applicable sections of the Commission's rules. See 47 CFR 1.48. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in the NPRM in order to facilitate our internal review process.

68. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554 (telephone 202-863-2893, facsimile 202-863-2898) or via e-mail *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at *bmillin@fcc.gov*.

#### IV. Ordering Clauses

69. It is ordered, pursuant to sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, and § 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b), that this Notice of Proposed Rulemaking is hereby adopted.

70. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. The Wireless Telecommunications Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

#### PART 1—PRACTICE AND PROCEDURE

1. The authority citation for 47 CFR part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1307 is amended by revising paragraph (a)(4) to read as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

(a) \* \* \*

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (See 16 U.S.C. 470w(5); 36 CFR parts 60 and 800.) The National Register is updated in the **Federal Register**. To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Appendix B to part 1 of this chapter, and the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, Appendix C to part 1 of this chapter.<sup>1</sup>

\* \* \* \* \*

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<sup>1</sup> The FCC intends to add Appendices B and C to part 1 when this proposed rule is finalized.