postmarked, or accompanied by a receipt from a commercial carrier or the U.S. Postal Service, on but not before July 31, 2000. The interim final rule specified that should the Department receive any significant comments that would cause us to revise the rule in any way that would affect the filing of the petitions, the Department would be able to do so, or to advise potential petitioners of our intent to do so, before such potential petitioners took any final action to file petitions for compensation.

Since the date of the interim final rule's publication, the Department has received several comments. The Department has reviewed all of these comments carefully. Some of these comments may warrant minor modifications to the interim final rule and we may elect to publish a response to these comments at a later date. However, none of the comments received by the Department leads us to change the substance of the regulation, the petition form, or the confidential physician or nurse practitioner affidavit at this time. In addition, the documentation required for various categories of petitioners to file a complete petition has not changed. Finally, the comments received by the Department do not change the effective date of the interim final rule. thus July 31, 2000, will continue to be the effective date of the interim final rule. Petitions for compassionate payments may be postmarked, or accompanied by a receipt from a commercial carrier or the U.S. Postal Service, on but not before July 31, 2000.

Dated: July 18, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Dated: July 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–19471 Filed 7–31–00; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–209]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands.

DATES: The rules are effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Davida Grant, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202–418–7050, or via the Internet at *dgrant@fcc.gov.*

SUPPLEMENTARY INFORMATION: Recognizing the unusually low telephone service penetration rates on tribal lands, the Commission released a Notice of Proposed Rulemaking on August 18, 1999, 64 FR 49128, seeking comment on the potential of various wireless technologies to provide service to tribal lands with low penetration rates. Specifically, the Notice sought comment on a variety of potential regulatory initiatives to encourage existing and new entrants to serve tribal lands, including: (1) Relaxing licensing and operational rules; (2) using unallocated spectrum to serve tribal residents; (3) awarding bidding credits as an incentive; (4) drawing geographic boundaries for spectrum licensing that recognize tribal boundaries; and (5) adopting satellite licensing policies to facilitate access to telecommunications services.

The record in this proceeding demonstrates that there is a substantial need for specific incentives targeted to the deployment of service on tribal lands. By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. According to the 1990 Census, 23 of the 48 largest tribal reservations (those with 500 or more households) had telephone penetration rates below 60 percent, and 16 of these reservations had a penetration rate below 50 percent. Penetration rates at several of the largest reservations are lower still: 18.4 percent on the Navajo Reservation and Trust Lands in Arizona, New Mexico, and Utah; and 22.2 percent on the Gila River Reservation in Arizona. By contrast, the current nationwide telephone penetration rate is 94 percent.

The *Report and Order* adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. Specifically, the *Report and Order* expands the Commission's bidding credit policy to make bidding credits available to winning bidders who use their licenses to deploy facilities and provide service to federally-recognized tribal lands that have a telephone penetration rate equal to or below 70 percent (''qualifying tribal land''). Applicants who qualify for the tribal lands bidding credit may obtain this credit in addition to any other generally available bidding credit for which they are available.

The credit amount will be based on infrastructure costs and geographic area. A winning bidder may receive a $300,000 credit for up to the first 200 square miles (518 square kilometers) of qualifying tribal land within its license area. In instances where qualifying tribal lands within a license area exceed 200 square miles (518 kilometers), a winning bidder may receive an additional $1500 per square mile (2.59 square kilometer), or $300,000 for each additional 200 square miles (518 square kilometers). All credits will be subject to a maximum limit based on the gross bid amount for the license for which the credit is sought. Where the gross bid amount is $1 million or less, the cap will be 50 percent of the gross bid. Where the gross bid amount is greater than $1 million and equal to or less than $2 million, the cap will be $500,000. Finally, where the gross bid amount exceeds $2 million, the cap will be 25 percent of the gross bid. The credit will be subtracted from the applicant's final payment and will not impact the amount of the down payment required under § 1.2107 of our rules. 47 CFR 1.2107. The Commission will entertain waiver request for a higher credit where an applicant demonstrates that its infrastructure costs exceed the available credit under the formula. However, we will not grant waivers in excess of the applicable percentage caps.

A winning bidder interested in obtaining the tribal lands bidding credit for particular market must indicate on its long form application that it intends to serve qualifying tribal lands in that market. To receive the credit, an applicant must amend its long-form application within 90 days of the filing deadline for long-form applications to certify that it will comply with the bidding credit buildout requirements adopted in the *Report and Order* and consult with the tribal government(s) regarding the deployment of facilities and service on the tribal land. The applicant also must attach a certification from the tribal government that its land is a qualifying tribal land, that it will not enter into an exclusive agreement with the carrier precluding entry by other carriers or unreasonably discriminate against any carrier, and that it will consent to allow the applicant to deploy facilities on its tribal land. This requirement does not preclude tribal governments from

negotiating additional reasonable terms and conditions with carriers. After these certifications are received, the Commission will award the bidding credit and the applicant will pay the final net adjusted bid amount, which equals the gross high bid less the tribal lands bidding credit (for applicants entitled to the small business bidding credit, the final net adjusted bid equals the net high bid less the tribal lands bidding credit).

To retain the credit, any recipient of this bidding credit must file a notification of construction within 15 days of the third anniversary of the initial grant of its license that it has constructed and is operating a system capable of serving 75 percent of the population of the qualifying tribal land for which the credit was awarded. A licensee failing to comply with this condition will be required to repay the bidding credit plus interest 30 days after the conclusion of the three-year buildout period.

Licensees granted a higher credit pursuant to a waiver must also file a certification that the credit amount was spent on infrastructure to provide wireless coverage to qualifying tribal lands. This certification should include a final report prepared by an independent auditor retained by the licensee verifying that the infrastructure costs are reasonable to comply with our buildout requirements. If the credit amount obtained by waiver exceeds the infrastructure costs of providing service to a qualifying tribal land, the licensee must pay the difference between the credit amount and the infrastructure costs.

In addition, the *Report and Order* expresses the Commission's commitment to work with carriers seeking flexibility under our technical and operational rules to promote deployment of wireless services on tribal lands. We believe that parties should seek waivers of specific rules or file other requests for regulatory in instances where greater flexibility than the rules allows would facilitate the provision of service to tribal lands.

In cases where it would facilitate provisions of service to tribal lands, we specifically encourage carriers to seek such relief from the following rules: (1) Antenna height/power and other operational requirements; (2) buildout requirements, (3) private (non-CMRS) service policies; and (4) satellite policies. We also encourage applicants seeking to expand coverage into adjacent licensing areas to file waivers where such relief would facilitate the provision of service to tribal lands. Parties seeking a waiver are encouraged to provide evidence of an agreement with tribal authorities that includes a commitment to serve the tribal lands. Lastly, we commit to considering tribal land boundaries in establishing license areas for future services to avoid splitting tribal lands into multiple licensing areas.

Contemporaneous with the Report and Order, the Commission has issued a Further Notice of Proposed Rulemaking (published elsewhere in this publication) wherein it seeks comment on additional auctions-based incentives it could adopt to encourage the deployment of wireless telecommunications services to tribal and other underserved areas.

Final Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice) in WT Docket No. 99–266.[2] The Commission sought written comment on the policies and rules proposed in the Notice, including comment on the IRFA. The comment received is discussed below. This Final Regulatory Flexibility Analysis (FRFA) for the Report and Order conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

The record in this proceeding demonstrates that there is a substantial need for specific incentives targeted to the deployment of service on tribal lands. By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. As set forth in Section III.A of the *Report and Order,* 1990 Census data indicates that 23 of the 48 largest tribal reservations (those with 500 or more households) had telephone penetration rates below 60 percent, and 16 of these reservations had a penetration rate below 50 percent. By contrast, the current nationwide telephone penetration rate is 94 percent. We believe telephone service is a necessity in today's world. The lack of basic telecommunications services puts affected tribal communities at a social and economic disadvantage.

The *Report and Order* adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. We make bidding credits available in future auctions to winning bidders who commit to deploy facilities to tribal areas that have a telephone service penetration rate at or below 70 percent. We also express our commitment to work with carriers seeking flexibility under our technical and operational rules to promote deployment of wireless services on tribal lands.

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

The U.S. Small Business Administration, Office of Advocacy (SBA), submitted a response to the IRFA. SBA argues that the Commission's IRFA was insufficient because it did not assess the significant economic impact certain proposals may have on small businesses nor did it propose alternatives that might minimize any impact.[4] SBA also argues more specifically that the Commission's proposal to lift designated entity (DE) transfer restrictions may disadvantage small businesses.[5] Further, SBA claims that the proposal to award bidding credits to any entity, regardless of size, that commits to serve tribal lands may provide big businesses an unfair advantage.[6]

We disagree with SBA's argument that we did not consider alternatives to minimize any significant economic impact on small entities. We discussed in the IRFA the alternative of using unallocated or unlicensed spectrum by telecommunications providers, including small entities, to serve the needs of tribal lands. Similarly, we discussed the use of channels within licensed spectrum to achieve a similar result, and sought comment on these alternatives. SBA also argues against lifting the DE transfer restrictions, which was an alternative we set forth in the *Notice.* This argument is moot, however, because we do not adopt this proposal in the *Report and Order.* Last, SBA states that we proposed to ''offer bidding credits in future auctions regardless of business size.'' [7] However, in this proceeding we have not changed the generally available bidding credit that is offered to small businesses, and our new tribal lands bidding credit is offered in addition to the small business bidding credit. This additional, targeted

[1] *See* 5 U.S.C. 603. The RFA, see 5 USC 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Extending Wireless Telecommunications Services to Tribal Lands, *Notice of Proposed Rulemaking,* WT Docket No. 99–266 (rel. Aug. 18, 1999).

[3] *See* 5 U.S.C. 604.

[4] SBA Comments at 7–8.

[5] *Id.* at 7.

[6] *Id.* at 2, 3–6.

[7] SBA Comments at 7.

incentive for tribal areas does not detract from our separate effort to assist small businesses through the small business bidding credit. For small businesses, the two credits may be combined.[8]

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

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [10] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[11] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [13] Nationwide, as of 1992, there were approximately 275,801 small organizations.[14] And finally, ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' [15] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[16] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[17] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[18] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[19] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated.

Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules adopted in the *Report and Order.*

Below, we further describe and estimate the number of wireless small business concerns that may be affected by the rules we adopt in the Report and Order.

Cellular Providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[20] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[21] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[22] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the rules adopted herein.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[23] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[24] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[25] No small businesses within the SBA-approved definition 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.[26] Based on this information, we conclude that the number of small broadband PCS

[8] *See Report and Order* para. 30.

[9] 5 U.S.C. 603(b)(3).

[10] *Id.* at 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, 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**.'' 5 U.S.C. 601(3).

[12] Small Business Act, 15 U.S.C. 632.

[13] 5 U.S.C. 601(4).

[14] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[15] 5 U.S.C. 601(5).

[16] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[17] *Id.*

[18] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation,* Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (''1992 Census'').

[19] 13 CFR 121.201, SIC Code 4812.

[20] 13 CFR 121.201, SIC code 4812.

[21] *1992* Census, Series UC92–S–1, at Table 5, SIC code 4812.

[22] Trends in Telephone Service, Table 19.3 (March 2000).

[23] 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, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[24] 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, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[25] *See, e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 9 FCC Rcd 5532, 5581–84 (1994).

[26] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released Jan. 14, 1997).

licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

SMR Licensees. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[27] In the context of 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service 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 FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

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 Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[28] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[29] Therefore, if this general ratio continues in 2000 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[30] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, 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 $3 million for the preceding three years.[31] The SBA has approved these definitions.[32] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[33] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[34]

Paging Licensees. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[35] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data.[36] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, herein adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[37] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[38] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[39] There are

[27] 47 CFR 90.814(b)(1).

[28] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[29] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[30] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[31] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[32] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[33] See generally Public Notice, ''220 MHz Service Auction Closes,'' Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[34] Public Notice, ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[35] 13 CFR 121.201, SIC code 4812.

[36] Trends in Telephone Service, Table 19.3 (February 19, 1999).

[37] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[38] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[39] 13 CFR 121.201, SIC code 4812.

approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[40] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[41] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Fixed Microwave Services. Microwave services include common carrier,[42] private-operational fixed,[43] and broadcast auxiliary radio services.[44] 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. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons.[45] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[46] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

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 Commission 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 area WCS licensees affected includes these eight entities.

Multipoint Distribution Systems (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[47] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[48] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[49] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[50] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. [51] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

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

This Report and Order requires entities taking advantage of the tribal lands bidding credit to satisfy several reporting and compliance requirements. Section III.B.5 requires an applicant to indicate on its long-form application that it intends to serve qualifying tribal lands in its license area(s). Also, the applicant will have 90 days after filing the long-form application to obtain a certification by the affected tribal government providing: (a) Its consent to allow the bidder to deploy facilities on its tribal land(s), in accordance with our rules; (b) a statement that the tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers and will not unreasonably discriminate against any carrier; and (c) confirmation that the tribal lands are qualifying tribal lands as defined in our rules.

In addition, an applicant must certify that it will comply with certain coverage requirements and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. Further, at the end of the three-year build-out period, licensees that receive the tribal lands bidding credit must file a certification that they have satisfied the build-out requirements. To the extent that licensees choose to take advantage of any additional flexibility that we adopt, they may be required to comply with other reporting requirements.

The rules we adopt allow entities 90 days from the filing deadline of the long-form application to obtain the consent of a tribal government to serve its tribal land. Negotiation periods will vary tremendously within this timeframe. We anticipate that some entities will employ an attorney (average of $200.00 per hour) to assist with negotiations. It is difficult to approximate how long it may take to obtain the consent of a tribal government, nevertheless, we estimate that the cost of obtaining tribal consent should not exceed $50,000.

Preparation of the requisite certifications should be relatively straightforward, particularly since technical analyses are not required. We

[40] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[41] 13 CFR 121.201, SIC code 4812.

[42] CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[43] 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.

[44] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* 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.

[45] 13 CFR 121.201, SIC 4812.

[46] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

[47] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[48] 47 CFR 1.2110 (a)(1).

[49] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing 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, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[50] 47 USC 309(j).

[51] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39.

estimate that it will take two (2) hours to prepare the certifications and that entities will use in-house staff (average $50.00 per hour), which should minimize costs. Since long-form applications are already required, we conclude that it should not take additional time to indicate an intention to take advantage of the tribal lands bidding credit.

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

SBA claims that we did not sufficiently assess in the IRFA how small businesses could be affected by our decisions to seek comment on eliminating designated entity (''DE'') transfer restrictions and awarding bidding credits in future auctions to entities that commit to deploy facilities to tribal lands. We disagree. The Notice sought comment on an array of alternatives, including the aforementioned, that the Commission could adopt to encourage the provision of wireless services to tribal areas. The RFA requires that the Commission ensure that regulations we adopt do not inhibit the ability of small entities to compete. The Notice did not propose to eliminate DE transfer restrictions, but rather sought comment on this alternative. In any event, the Report and Order does not address DE transfer restrictions.

Likewise, we sought comment on whether to award bidding credits in future auctions to any entity, regardless of size, that commits to serve tribal lands. SBA claims that such a proposal would unfairly advantage large businesses. We disagree. The Notice sought comment on whether to combine any credit for serving tribal lands with the small business credits available under our rules. Thus, small entities could potentially receive two credits for a license area. We did not propose a specific implementation program, but rather sought comment from the industry as to how to structure the program, including whether to limit the credit to designated entities, the appropriate credit amount, and any necessary safeguards. In addition, we sought comment on how to minimize any economic impact on small entities.

The Report and Order expands our bidding credit policy to facilitate the provision of wireless telecommunications services to tribal lands. Entities taking advantage of the credit must comply with certain reporting and compliance requirements. Expected costs include: (1) Negotiating with and obtaining consent from tribal governments; (2) preparing the requisite certifications, and (3) deploying facilities to tribal areas. We conclude that obtaining tribal consent and deploying facilities to tribal areas may have a significant economic impact on small entities. Below, we discuss our efforts to minimize the economic impact on small entities in both of these areas.

Obtaining Tribal Consent

As discussed in Section III.B.1 of the Report and Order, we find that tribal governments are uniquely situated to ensure that carriers who obtain credits will meet their commitments to deploy facilities to the tribal areas with the greatest need. Therefore, tribal consent is key to meeting the objectives of our bidding credit initiative. We recognize that negotiations with a tribal government could prove lengthy and costly, particularly where an entity seeks the consent of multiple tribal governments. To minimize the economic impact on successful bidders, we rejected our proposal to require entities taking advantage of the credit to file an executed agreement with tribal governments setting forth all the terms and conditions for deploying facilities and initiating service on tribal lands. We concluded that this approach would expand the negotiations process and prove overly burdensome. Instead, entities need only obtain the consent of the tribal authority and file two certifications, as set forth in Section III.B.5 of the Report and Order.

Deployment of Facilities

Compliance with the coverage requirements may have a significant economic impact on small entities, particularly in instances where infrastructure costs for serving tribal lands exceed the available credit. The rules we adopt, however, should minimize the infrastructure costs for serving tribal areas. As set forth in Section III.B.4 of the Report and Order, we adopt several caps for the tribal lands bidding credit, depending on the gross bid amount of a license, which takes into account the potential recovery level for infrastructure costs. For example, for licenses with a gross bid amount up to $1 million, carriers may receive a bidding credit up to 50 percent of the value of the license.[52] Further, in instances where a carrier's infrastructure costs exceed the available credit, the carrier may seek a waiver to obtain additional credit, subject to the applicable caps. This should allow for substantial recovery of infrastructure costs, thus minimizing the economic impact on small entities.

The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) also will be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), and 309(j), the *Report and Order* is hereby *Adopted*.

The Commission's rules *are amended* as set forth in Appendix B. The provisions of the Report and Order and the Commission's rules, as amended in Appendix B, shall become effective October 2, 2000.

The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Telecommunications, Penalties.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

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

Authority: 47 U.S.C. 325(e).

2. Section 1.2107 is amended by redesignating paragraph (e) as (f), and by adding a new paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in § 1.2110(e)(3)(1), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

* * * * *

[52] The total size of the qualifying tribal lands, however, is a significant factor in determining the amount of the availabale credit. See Section III.B.4.

3. Section 1.2110(e) is amended by adding paragraph (e)(3) to read as follows:

§ 1.2110 Designated entities

* * * * *

(e) * * *

(3) *Bidding credit for serving qualifying tribal land.* A winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying tribal land within that market, provided that it complies with § 1.2107(e). The following definition, terms, and conditions shall apply for the purposes of this section and § 1.2107(e):

(i) Qualifying tribal land ''means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments,'' (see 25 CFR 20.1(v)), that has a wireline telephone subscription rate equal to or less than seventy (70) percent based on the most recently available U.S. Census Data.

(ii)(A) *Certification.* Within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and attach a certification from the tribal government stating the following:

(*1*) The tribal government authorizes the winning bidder to site facilities and provide service on its tribal land;

(*2*) The tribal area to be served by the winning bidder constitutes qualifying tribal land; and

(*3*) The tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land.

(B) In addition, within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the buildout requirements set forth in § 1.2110(e)(vi) and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set forth in § 1.2110(e)(3)(iv), the bidding credit shall equal three hundred thousand (300,000) dollars for the first twohundred (200) square miles (518 square kilometers) of qualifying tribal land, and fifteen hundred (1500) dollars for each additional square mile (2.590 square kilometer) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed twenty five (25) percent of the high bid.

(v) *Application of credit.* The bidding credit amount, if approved by the Commission, will be subtracted from the final net bid amount. The bidding credit will not affect calculation of the down payment.

(vi) *Post-construction certification.* Within fifteen (15) days of the third anniversary of the initial grant of its license, a recipient of a bidding credit under this section shall file a certification that the recipient has constructed and is operating a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land for which the credit was awarded.

(vii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(e)(3)(vi), then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license.

[FR Doc. 00–19479 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U