

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 1, 22, 24, 27, and 90**

[WT Docket Nos. 02–381, 01–14, 03–202; FCC 04–166]

Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) examines ways of amending its spectrum regulations and policies to promote the more rapid and efficient deployment of quality spectrum-based services in rural areas. In particular, the Commission seeks to expand upon the record in this proceeding by identifying additional measures that it can take to promote access to spectrum in rural areas. The Commission seeks additional comment on adopting an unserved-area or “keep what you use” re-licensing process for current and future wireless services and asks whether such measures are likely to spur the delivery of wireless services to rural areas. This document also inquires whether additional performance requirements might be appropriate for license terms subsequent to initial renewal to encourage the deployment of quality spectrum-based service in rural areas.

DATES: Comments due: January 14, 2005. Reply Comments Due: February 14, 2005.

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SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rulemaking portion (*Rural Further Notice*) of the Commission’s Report and Order and Further Notice of Proposed Rulemaking FCC 04–166, in WT Docket Nos. 02–381, 01–14, and 03–202, adopted July 8, 2004, and released September 27, 2004. Contemporaneous with this document, the Commission publishes the Report and Order and

order on reconsideration portion (*Report and Order*) (summarized elsewhere in this publication). The full text of this document is available for public inspection and copying 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: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at fcc@bcpiweb.com. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at Brian.Millin@fcc.gov.

Synopsis of the Further Notice of Proposed Rulemaking**I. Introduction**

1. In this *Further NPRM*, the widespread provision of communications services is not only one of the Commission’s primary public policy objectives, but also one of its statutory mandates. Our primary mission is to promote “communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.” In addition, the Omnibus Budget Reconciliation Act of 1993 added section 309(j) to the Communications Act, which requires the Commission to promote various objectives in designing a system of competitive bidding. A number of these objectives focus on the provision of spectrum-based services to rural areas, such as encouraging the development and rapid deployment of new technologies, products, and services for the benefit of the public, “including those residing in rural areas.” In addition to the rural service objectives mandated by section 309(j), Congress directed the Commission to pursue other broader public interest goals. Specifically, section 309(j)(3) requires the Commission to promote efficient and intensive use of the spectrum, encourage economic opportunity and competition, and recover for the public a portion of the value of the public spectrum. Given these statutory obligations, the Commission’s spectrum policy goals include facilitating the efficient use of spectrum, as well as fostering competition, and rapid,

widespread service consistent with the goals of the Communications Act. In this proceeding, we released a Notice of Inquiry (*Rural NOI*) in December of 2002, 68 FR 723 (January 7, 2003), and, in October 2003, we released our initial Notice of Proposed Rulemaking (*Rural NPRM*), 68 FR 64050 (November 12, 2003).

2. As noted in the *Report and Order*, our current policies and rules generally facilitate rural development of wireless services where it is economic to do so. The competitive bidding process and related performance and other requirements for successful bidders, including existing substantial service and flexible use policies, encourage licensees to make productive and innovative use of spectrum. In addition, our secondary market mechanisms provide on-going opportunities for new entrants to gain access to spectrum from those licensees as market conditions change, thereby ensuring that spectrum moves to its highest valued uses over time. We believe that, insofar as they have economic incentives to do so, new wireless service providers will choose to enter rural markets and existing rural service providers will extend their presence further into the rural areas where they operate.

3. As we acknowledge in the *Report and Order*, however, there may be circumstances in which our market-oriented policies are insufficient to foster access to spectrum and deployment of service in rural areas. In such cases, we will continue to consider the adoption of appropriate performance requirements, along with other means, for both existing and future licenses to further encourage the provision of wireless service to rural areas. Accordingly, in this Further Notice, we build on the record accumulated in response to the *Rural NPRM* and we seek comment on the appropriate mechanisms to further ensure that spectrum ultimately continues to be put to its highest valued use. In particular, we seek additional comment on the effectiveness of our partitioning, disaggregation, spectrum leasing and other market-based policies and rules in making wireless services available to more rural areas. We also seek comment on our potential use of “keep-what-you-use” re-licensing mechanisms, renewal term substantial service requirements, as well as other alternatives to move unused or underused spectrum to those who may be able to use it more intensively. We also seek comment on the economic impacts of employing such approaches and whether different services may benefit from different

approaches to expanded spectrum access.

4. As noted above, service to rural areas may be delayed because entities that are otherwise willing and able to deploy service lack access to spectrum. The increasing use of unlicensed wireless technologies and applications in rural areas suggests that operators will deploy service if there is availability of or access to spectrum with which to do so. Accordingly, we undertake this further inquiry to assess alternative methods that will ensure that spectrum rights flow to those who are willing and able to put spectrum to use in rural areas.

5. In this *Rural Further Notice*, we seek to explore whether changing our method for enforcing performance requirements or adding renewal term performance requirements could have a beneficial impact on the deployment of wireless service to rural areas. In this regard, this section examines how the licensing of wireless services has evolved from a “keep what you use” standard to a “complete forfeiture” approach. The following paragraphs provide an overview of the development of licensing models and performance standards, while also providing the Commission’s rationale behind these policy shifts.

II. Background

6. *Site-by-site Construction.* Initially, the Commission licensed mobile and fixed wireless services on a site-by-site and frequency-by-frequency basis. Licensees were authorized to operate a station only at a specific location, using a specific frequency or frequencies. Some examples of this type of licensing approach include one or more base stations with mobile units in the vicinity, or a fixed communications path between two points. With this type of site-specific licensing, the Commission adopted a “keep what you use” performance requirement, meaning that at the end of a licensee’s construction period, any unconstructed areas or frequencies came back under Commission control for re-licensing on a first-come, first served (often pre-coordinated) site-by-site basis. In this regard, the Commission sought to ensure timely use of spectrum and “to ensure that the channels which we make available to eligibles are put in ‘use’ and not put in ‘storage.’”

7. For example, the Commission’s original rules governing 800 MHz SMR were designed to license dispatch radio systems on a transmitter-by-transmitter basis in local markets. The Commission typically gave an 800 MHz SMR licensee up to 12 months after the grant

of a license to construct and begin operation of its facilities, meaning that each licensed site and frequency had to be up and running within one year. At the end of that time period, licensed areas and frequencies that were unconstructed reverted back to the Commission for re-licensing.

8. Hybrid Licensing. As technology evolved, mobile wireless providers sought to expand their reach and to provide service over a wide area. Two different approaches of “wide-area” licensing developed in response to increasing demand for new services: the SMR model and the cellular model. While these approaches permitted SMR and cellular carriers to operate within a wide-area footprint, the Commission’s site-specific licensing rules and “keep what you use” policy still applied.

9. For example, responding to growing demand for mobile telephony and limited capacity, SMR licensees sought to operate technically innovative, wide-area systems. Because of the complexity and expense of building these systems, however, licensees were frequently unable to provision service within the 8 to 12 month time frame required by Commission rules. Beginning in 1991, the Commission granted waivers and extended implementation authority to many SMR licensees, giving them authority to expand the geographic scope of their services and combine large numbers of channels in order to provide service intended to compete with cellular. Applicants who were granted waivers or extended implementation authority received additional time to construct the licensed spectrum. However, applicants still had to apply for each site individually and in the event the licensee did not construct and operate the frequencies within the extended time period, the unused spectrum came back under Commission control for re-licensing.

10. In contrast, wide-area licensing for the cellular radiotelephone service followed a different path. In establishing commercial licensing of cellular in 1981, the Commission recognized the need to define cellular service areas while also providing authorized cellular operators with the freedom they needed to adapt their systems in the face of growing and changing demand. The Commission established a regulatory structure centered on cellular geographic service areas (CGSAs) that would be defined by license applicants themselves as the areas within a market that they intended to serve. An applicant was required to serve at least 75 percent of its CGSA. The Commission soon after added an

additional rule, requiring applicants to define their CGSAs to cover at least 75 percent of the population or area of the corresponding MSA or RSA. Carriers operating in MSAs were required to place their cellular stations into operation within 36 months of the initial license grant, while operators in RSAs had 18 months to construct. In addition, the Commission afforded licensees a five-year “fill-in” period in which a licensee could apply to expand the boundaries of its CGSA within the MSA/RSA without the worry of competing interests from another applicant.

11. As the popularity of cellular service began to grow, the Commission determined that it was not in the public interest to allow a cellular licensee to protect unserved territory for an unlimited period of time simply because the territory was part of its CGSA. The Commission, therefore, imposed a “keep-what-you-use” regime on all cellular licenses, and established rules and procedures for accepting applications to operate new cellular systems in areas still unserved at the expiration of the incumbent’s five-year “fill-in” period. In addition, the Commission adopted rules determining the size of CGSAs by a mathematical formula and redefined the boundaries authorized for existing cellular systems to more closely mirror the areas of actual construction and coverage so that potential licensees for the cellular unserved areas would have a clearer picture of which areas were available. At the end of the five year “fill-in” period, any unused spectrum reverted back to the Commission for re-licensing. New licenses authorized as a result of the unserved area licensing rules are licensed on a site-specific basis, and licensees are required to complete construction and provide service to the public within one year of the initial authorization grant.

12. *Geographic Area-based Approach.* While the hybrid licensing models did help to expand wireless service, problems remained. For example, even with waivers and grants of extended implementation authority developed in the hybrid licensing model, the SMR licensing process remained cumbersome because of the requirement that SMR sites and frequencies be licensed individually. The Commission noted specifically that site-by-site licensing deprives licensees of flexibility to move transmitter sites throughout a defined service area without seeking the Commission’s prior approval.” In order to provide wireless licensees with needed flexibility, therefore, the Commission adopted a system of

geographic-area licensing with minimum coverage requirements based on population or geography. At the same time, the Commission transitioned from the “keep what you use” licensing policy to a “complete forfeiture” approach, which made licenses subject to automatic cancellation for failure to meet interim coverage requirements at specified benchmarks. Failure to meet applicable performance benchmarks would result in complete loss of the license, even in areas where construction had already been completed.

13. The Commission first applied geographic area licensing and a “complete forfeiture” performance standard when it established the narrowband and broadband PCS services. In order to permit the widest possible range of mobile communications, the Commission put in place technical standards that would permit significant flexibility in both the design and implementation of PCS systems as well as geographic- and population-based construction benchmarks that would ensure that licensees built out their systems or face forfeiture of their licenses. The Commission concluded that these and other changes to its licensing approach would encourage diversity of technologies and speed deployment of service. In addition, in 2000, the Commission adopted “substantial service” as an alternative construction requirement for PCS licensees. As noted, under the “complete forfeiture” approach, failure to meet these benchmarks results in automatic cancellation or non-renewal of the entire PCS license, including the rights to operate from any facilities already constructed under the authorization.

14. The Commission also applied geographic area licensing to existing services, such as SMR. The Commission sought to institute policies that would afford wide-area SMR system licensees opportunities to bid on new licenses that offered the same flexibility as cellular and PCS licenses in terms of facility location, design, construction, and modification. Therefore, the Commission designated the upper 200 channels of 800 MHz SMR spectrum for geographic-area licensing based on EAs, and overlaid geographic markets over existing site-based systems. The Commission granted licensees the authority to construct base stations at any available site and on any available channel within their spectrum blocks so long as previously existing site-based facilities are provided appropriate interference protection. Using the “complete forfeiture” approach, the

Commission also instituted minimum coverage and channel use requirements at three- and five-year benchmarks. Two years later, in 1997, the Commission adopted geographic-area licensing with EA service areas for the lower 230 800 MHz channels as well, stating that geographic area licensing remains the most efficient and logical licensing approach for the majority of licensees in the band. The Commission adopted construction requirements similar to the upper channels, but eliminated the channel usage requirement and also adopted an alternative plan whereby licensees in the lower 230 channels can satisfy coverage obligations by providing substantial service within five years of license.

15. In recent years, the Commission has continued to embrace geographic area licensing and moved towards the adoption of more flexible construction requirements, such as substantial service. This shift has occurred in order to provide flexibility for licensees seeking to provide a variety of services with their spectrum, not all of which require pervasive geographic coverage, as well as to accommodate licenses encompassing very large service areas as opposed to smaller site-based licenses. In keeping with its goal of flexibility for licensees, the Commission has also adopted substantial service as the sole standard, or as an alternate standard, for many services. For example, LMDS, 39 GHz and 24 GHz microwave services all have the sole construction requirement of providing substantial service by the end of the initial license term. As discussed earlier, the Commission’s increasing movement towards substantial service as an alternative means of meeting construction requirements has been met with mixed reactions. Based on this difference of opinion between commenters, we seek further comment in the paragraphs below as to the appropriate performance standards to apply.

16. We note that regardless of the type of requirement, our current performance requirements apply only during the initial term. As noted, once a licensee renews its license, no additional performance requirements are imposed in subsequent terms other than the standard necessary in order to achieve a renewal expectancy. In the case of renewals, if an incumbent files an appropriate and timely application and neither the public nor the Commission objects, the license will typically be renewed for another term. However, if another party objects or files a competing application, a licensee must demonstrate that it is entitled to a renewal expectancy. A renewal

applicant involved in a comparative renewal proceeding will acquire a renewal expectancy if the applicant provides sufficient evidence that the applicant has provided substantial service during its license term, and that the applicant has substantially complied with the Communications Act, as well as with all applicable Commission rules and policies. As a general matter, if a renewal applicant satisfies these requirements, the applicant will be granted a renewal expectancy and other competing applications will be dismissed.

III. Further Notice of Proposed Rulemaking

A. Existing Market-Based Models

17. The Commission’s rules and policies provide interested parties with several market-based vehicles for obtaining access to licensed spectrum through the secondary market. First, an interested party may obtain a license through the assignment and transfer of control process, pursuant to Commission review and approval under section 310(d) of the Communications Act. Furthermore, by utilizing the partitioning and disaggregation process, parties need not buy a license “as is”—instead, parties may obtain licenses for a particular subset of frequencies and carve out certain geographic areas that satisfy their unique needs, while the original licensee retains the remaining frequencies and geographic areas. Second, parties may utilize the spectrum leasing process—further enabled under the Commission’s secondary markets proceeding—to engage in short- and long-term leases. Based upon the record developed in response to the *Rural NPRM*, we are hopeful that these measures will provide effective means of providing access to spectrum through the secondary market. As discussed below, however, it appears that there are ways in which these mechanisms nevertheless may not satisfy the needs of some parties; in the following paragraph, we identify some of the key concerns with these mechanisms, as reflected in the record, and seek additional comment on the efficacy of these procedures in providing access to spectrum in rural areas.

18. As an initial matter, we observe that the record reflects some disagreement with respect to the effectiveness of our partitioning and disaggregation policies in providing access to spectrum in rural areas. On the one hand, the record provides information on partitioning and disaggregation transactions that suggest

these policies are working. On the other hand, the record also shows that some rural carriers may not be receiving the benefits of partitioning and disaggregation. According to commenter, the problems with partitioning and disaggregation are multi-fold: (1) The Commission's rules do not provide licensees with an incentive to 'carve out' portions of their license areas for rural carriers; (2) the administrative costs of entering into and managing the partitioning/disaggregation process outweigh the realized financial gains; (3) and licensees wish to retain the entire geographic area when they go to sell the system as a whole in the future, because licensees perceive that unpartitioned licenses will have a higher resale value. Another commenter echoes these concerns, stating that large national and regional carriers that control licenses for most of the spectrum are not willing or able to devote the time and resources necessary to negotiate and implement arrangements on the scale desired by rural telephone companies.

19. In order to identify the specific nature and extent to which our partitioning and disaggregation rules are working, we seek additional comment on specific partitioning and disaggregation transactions, as well as the negotiations process. We seek to develop a more comprehensive understanding of the ways in which this process may be insufficient to promote access to spectrum. Given the conflicting record regarding the ability of carriers to engage in smaller-scale partitioning and disaggregation transactions, we believe that additional information, particularly specific transaction data, will facilitate our greater understanding of the benefits and shortfalls of our partitioning and disaggregation policies in fostering access to spectrum in rural areas. We also seek comment on how these policies may work in coordination with potential re-licensing mechanisms such as "keep what you use," as discussed in greater detail below. We note that certain commenters proposed various incentives for licensees to engage in partitioning and disaggregation, including the provision of bidding credits for auction winners that commit to partitioning portions of their licenses to rural carriers, monetary credits towards a future spectrum auction in exchange for the return of unused spectrum, and credits towards licensees' construction obligations. We ask for comment on these proposals and also seek comment on additional incentives

that are likely to encourage partitioning and disaggregation in rural areas.

20. In addition to the partitioning and disaggregation process, the Commission's rules also facilitate access to spectrum on the secondary market through spectrum leasing. Because our rules further enabling spectrum leasing went into effect on January 24, 2004, we are not yet in a position to evaluate the effectiveness of spectrum leasing in providing access to spectrum in rural areas. Nevertheless, we are encouraged by the record that interested parties will take advantage of our spectrum leasing rules to obtain access to previously "unused" spectrum and provide innovative and new service offerings to the public. Indeed, based upon preliminary information regarding proposed spectrum leasing transactions, we are optimistic that our spectrum leasing rules are affording many new opportunities for access to spectrum, including spectrum in rural areas.

21. While the record in response to the *Rural NPRM* indicates that many commenters are optimistic that our spectrum leasing will promote the deployment of wireless services to rural areas and therefore urge the Commission to "wait and see" how secondary markets develop prior to taking any regulatory action to encourage spectrum access, others indicate concern that this market-based mechanism will be an insufficient means of providing spectrum access. Accordingly, we seek additional comment on how spectrum leasing is addressing concerns about access to spectrum, particularly from those who have entered into, or are contemplating, such transactions. In particular, we seek comment regarding situations where parties' need for spectrum have been accommodated by spectrum leasing as well as situations where those needs may not have been satisfied by the availability of such leasing.

B. "Keep What You Use" Re-licensing Measures

22. Based upon the record developed in this proceeding, as well as available data on partitioning and disaggregation transactions and preliminary information on spectrum leasing agreements, we believe that our current policies and regulations are working to promote access to "unused" spectrum. Nevertheless, the record also suggests that, for a variety of reasons, there may be instances where these market-based policies may not be adequate to promote access to spectrum in rural areas. As we have already indicated, the rapid provision of broadband and other wireless services to rural areas is of

critical importance in accomplishing our statutory and public policy objectives. Accordingly, if we determine that our current policies are insufficient to increase access to spectrum, we may take additional measures to ensure that unused spectrum moves into the hands of those who stand ready and willing to deploy wireless voice and data services to rural Americans.

23. Based upon the record received in response to the *Rural NPRM*, commenters indicate that extending the "keep what you use" to additional wireless services may provide a variety of benefits. For those services that otherwise would be subject to a "complete forfeiture" approach, a "keep what you use" approach might also have the benefit of allowing future licensees in those services to keep certain portions of their licenses rather than forfeiting the entire license for failure to satisfy certain benchmarks.

24. We also recognize, however, that adopting a "keep what you use" approach may yield certain unintended and potentially detrimental consequences, as asserted by a number of commenters. As an initial matter, commenters suggest that adopting a "keep what you use" approach may not actually result in additional rural deployment, because, if it is economically beneficial for a carrier to deploy services in a particular area, they have sufficient incentive to do so without regulatory intervention. Second, commenters caution that adopting a "keep what you use" approach may upset the valuation of spectrum licenses and chill investment in wireless services. Third, such an approach might result in uneconomic construction, in an attempt to "save" licensed area. Fourth, adopting the "keep what you use" approach may result in numerous administrative and legal costs, including the costs of initially assessing whether the spectrum is being "used," reclaiming the subject spectrum and resolving "any controversy or litigation that may arise as a result," engaging in the re-licensing process, and "waiting to see whether the new licensees actually provide the desired wireless service to the indicated rural territory." Finally, carriers express concern that adopting a "keep what you use" approach may strip a licensee of legitimate business opportunities, such as the ability to lease excess spectrum in the secondary market.

25. Given the potential benefits and drawbacks of the "keep what you use" approach, we intend to continue to examine carefully the potential use of this mechanism to increase access to spectrum in this proceeding as well as

in future service-specific proceedings. In the *Rural NPRM*, the Commission limited its inquiry regarding spectrum re-licensing and adoption of the “keep what you use” approach to future spectrum allocations only. In this *Rural Further Notice*, however, we extend our inquiry to include all licensed terrestrial wireless services that are within the scope of this proceeding, as well as future spectrum allocations.

Accordingly, we see comment on the benefits, if any, of extending the “keep what you use” approach. We ask whether the potential benefits of the “keep what you use” approach, in terms of increasing access to spectrum in rural areas, are likely to outweigh the potential costs. In this regard, commenters are asked to discuss the likelihood that such an approach will in fact cause uneconomic construction. We note that, to the extent that any construction requirement will cause a licensee to deploy facilities in a manner in which it may not otherwise have in the absence of such a rule, any build-out obligation could to some extent be said to cause uneconomic investment or construction. Accordingly, we seek comment on whether a “keep what you use” approach will cause undue disruption or whether it should more appropriately be viewed as one of many factors to be considered by a licensee in determining whether or not to deploy facilities in a given area.

26. We also seek comment on the impact of such a re-licensing approach on secondary markets. Because licensees may wish to recoup some financial benefit from their unused spectrum, rather than simply allowing it to revert to the Commission, a “keep what you use” approach would seem to encourage licensees to engage in more partitioning, disaggregation, and spectrum licensing arrangements. For these reasons, adoption of a “keep what you use” approach might well complement our existing market-based policies. On the other hand, we note that certain commenters caution that a “keep what you use” approach to spectrum re-licensing could eliminate long range benefits from the Commission’s positive steps taken to foster development of a secondary market in spectrum. We seek clarification on the potential impact of a “keep what you use” approach on our secondary market policies.

27. We acknowledge that any “keep what you use” approach would necessitate certain important administrative determinations, such as identifying what constitutes “use” for particular services and requiring licensees to demonstrate sufficient

“use.” However, we do not intend to set out a comprehensive definition of spectrum “use” in this proceeding. Should we adopt a “keep what you use” approach, we will examine the definition of “use” and other administrative issues in future service-specific proceedings.

C. Renewal Term Substantial Service Requirements

28. We also seek comment on whether we should strengthen the application of substantial service performance requirements after initial license terms as a means of encouraging access to spectrum and provision of service in rural areas. *The Report and Order* provided most geographic area licensees with the option of satisfying a substantial service standard if they did not already have such an option. As discussed in the *Report and Order*, the unique characteristics and considerations inherent in constructing within rural areas may make it impractical for licensees with population-based build-out requirements to construct in such areas. We believe that enabling licensees to fulfill their construction obligations by providing substantial service affords them the flexibility to deploy facilities in sparsely populated areas that otherwise may not be served. Indeed, the record in this proceeding supports our belief that the substantial service requirement enhances licensee ability to bring service to rural areas.

29. We therefore seek comment on the viability of more rigorous substantial service construction requirements for licenses beyond their initial license terms. Given our interest in ensuring that spectrum is available to those who actively seek to deploy facilities, we ask if such a measure would promote access to spectrum and expanded service in sparsely populated areas. We also ask how best to structure any new substantial service requirements for use in renewal license terms that will expand coverage in rural areas. For example, should we require the provision of additional coverage beyond that which is sufficient to satisfy the existing substantial service standard during the initial license term? In other words, is it reasonable to expect a carrier to expand its coverage over time and therefore impose an increasing substantial service requirement? If so, we ask commenters to explain how best to formulate such standards to provide both existing and prospective licensees with flexibility to develop or revise their long-term business plans and build-out strategies but also with sufficient clarity for them to understand what needs to be

accomplished and by what date. In addition, we ask commenters to describe any safe harbor provisions that would facilitate compliance or explain why the adoption of a safe harbor for that particular standard would not be appropriate. In addition, given our desire to encourage the deployment of service in rural areas, should we require licensees to demonstrate that some percentage of the rural population of its licensed areas is being covered in order to satisfy its substantial service showing whether or not a competing application is filed against a renewal application? Recognizing the reservations of some to the imposition of performance requirements during renewal license terms, we also seek comment on any disadvantages that might accrue if we were to strengthen substantial service performance after initial terms.

D. Other Alternatives

30. We ask commenters to identify any other methods we might adopt to make unused spectrum available to those better positioned to deploy service in the event our market-based policies fail to do so. For example, as stated earlier, although we believe it is premature at this time to adopt the use of easements, we will continue to consider the potential impact of easements on the incentives of all parties to ensure the highest and best use of the band. Comments in this proceeding provided mixed views on such use. One commenter generally supports such easements provided they permit, but do not require, licensees to allow the operation of unlicensed devices on their networks. However, others submit that such easements or underlays for the provision of unlicensed services should not be permitted because they believe that unlicensed overlays will interfere with the Commission’s secondary market policies, would create uncertainty regarding a licensee’s spectrum rights, as well as raise interference concerns. We, nevertheless, remain interested in the role that easements or other authorized secondary uses could play in providing incentives for the development by third parties of new devices and services that will increase access to spectrum, such as software-defined radios and other frequency-agile devices in frequency bands that are otherwise currently restricted to exclusive license holders. Such ability to take advantage of unused portions of licensed spectrum could lead to the development of more equipment at lower costs, a key barrier to entry in rural areas. Nonetheless, we also seek to afford license holders as much

reliability in their spectrum usage rights as practicable. In light of the objections of some to the possible use of easements, we ask commenters to clarify their objections and, where possible, provide examples of potential adverse consequences. Should we choose to use such easements, we ask, first, how they could be structured to increase spectrum access and service coverage while also addressing the concerns raised in the comments. Second, after what time period should we allow entities to employ such easements, e.g., immediately after renewal if a certain standard was not met during the initial term, or at some other point?

31. Finally, because we recognize that different wireless services may benefit from different approaches to spectrum access, we ask commenters to identify the specific services to which their proposed approaches should apply and whether there are any services that should be excluded. For example, how should the re-licensing methodologies available for mobile wireless services be different than those for fixed services? Should different approaches be applied to different geographic markets, *i.e.* is it appropriate to apply the same re-licensing method for a nationwide license as well as a MTA-based license?

IV. Procedural Matters

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

32. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.

B. Initial Regulatory Flexibility Analysis

1. Introduction

33. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). 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 Further Notice provided in paragraph 183 of the item. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Further Notice and IRFA

(or summaries thereof) will be published in the **Federal Register**.

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

34. In this *Rural Further Notice*, the Commission seeks to expand upon the record received in response to the *Rural NPRM*, with respect to additional measures that the Commission can take in order to promote the further expansion of spectrum-based services into rural areas. As the Commission observed in the Report and Order, there may be circumstances in which our market-oriented policies lack the ability to foster access to spectrum and deployment of wireless service in rural areas. In situations such as these, therefore, it may be appropriate to impose renewal-term performance requirements for both existing and future licenses in order to continue to encourage the provisioning of wireless service to rural areas. Based on these observations, the Further Notice seeks comment in the following areas.

35. First, the Commission seeks comment on the appropriate mechanism to further ensure that spectrum continues to be put to its highest valued use. Specifically, the *Rural Further Notice* seeks additional comment concerning the effectiveness of the Commission's partitioning, disaggregation, and secondary markets rules as well as other market-based policies and rules in making wireless services available in more rural areas.

36. Second, the Commission also seeks comment on the potential use of "keep what you use" relicensing mechanisms, renewal term substantial service requirements, and other alternatives such as easements to move unused or underused spectrum to those carriers who may be able to use it more intensively. At the same time, the Commission seeks comment on the economic impact of employing the above approaches and whether there are different services that may benefit from a different approach to expanded spectrum access.

3. Legal Basis

37. The Commission tentatively concludes that it has authority to issue the *Rural Further Notice* under sections 4(i), 11, 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 161, 303(r), and 309(j).

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

38. The RFA directs agencies to provide a description of, and where

feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

39. *Cellular Licensees*. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms out of a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

40. *220 MHz Radio Service—Phase I Licensees*. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only 12 firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

41. *220 MHz Radio Service—Phase II Licensees*. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. For this service in

1997, we adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

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

August 27, 2002, and closed on September 18, 2002. 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. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

43. Upper 700 MHz Band Licenses. The Commission authorized service in the upper 700 MHz band in 2000. The related auction, previously scheduled for January 13, 2003, has been postponed.

44. Paging. For the Paging Service in 1997, we adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. 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. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of Metropolitan Economic Area (MEA) and EA licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One-hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, 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 private and common carriers reported that they were engaged in the provision of either paging or “other mobile” services. 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.

45. 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 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. 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. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. 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 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

46. Narrowband PCS. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994, and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in 2000. 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. 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. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001, and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status

as a small or very small entity and won 311 licenses. A fourth auction commenced on September 24, 2003, and closed on September 29, 2003. Here, four bidders won 48 licenses. Four of these claimed status as a very small entity and won 48 licenses. Finally, a fifth auction commenced on September 24, 2003, and closed on September 25, 2003. Here, one bidder won five licenses. That bidder claimed status as a very small entity.

47. *Specialized Mobile Radio (SMR)*. The Commission awards "small entity" bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

48. 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 bidders won 108 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 and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

49. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in 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 the SBA.

50. *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, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

51. The Commission's 1994 Annual Report on PLMRs 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.

52. *Fixed Microwave Services*. Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. Currently, 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 FRFA, we will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies—that is, an entity with no more than 1,500 persons. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *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. The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

54. *39 GHz Service*. The Commission defines "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. "Very small business" 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. The SBA has approved these definitions. 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.

55. *Local Multipoint Distribution Service*. An auction of the 986 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. 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. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. 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 32 small and very small business winning bidders that won 119 licenses.

56. *218–219 MHz Service*. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 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. For this service in 1999, 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 exceeding \$15 million for the preceding three years. 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 exceeding \$3 million for the preceding three years. The SBA has approved of these definitions. At this time, we cannot estimate 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 FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

57. *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 exceeding \$15 million. 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 not exceeding \$3 million. These definitions have been approved by the SBA. 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 cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

58. *Rural Radiotelephone Service*. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

59. *Air-Ground Radiotelephone Service*. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 10 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

60. *Offshore Radiotelephone Service*. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55

licensees in this service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

61. *Multiple Address Systems (MAS)*. Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

62. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.

The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

63. *Incumbent 24 GHz Licensees.* 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. Therefore, the applicable definition of small entity is the definition under the SBA rules for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone (now Wireless) firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band: Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

64. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million. "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

65. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. 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. 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 \$3 million for the preceding three years.

An auction of 52 MEA licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine 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.

66. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the *Rural Further Notice*.

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

67. The *Rural Further Notice* does not propose any specific reporting, recordkeeping or compliance requirements. However, we seek comment on what, if any, requirements may arise as a result of our discussion in the *Rural Further Notice*.

6. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

68. 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.

69. As stated, the *Rural Further Notice*, the Commission seeks detailed comment on additional measures that the Commission can take in order to promote the further deployment of wireless services to rural and underserved areas. As a general matter, it is reasonable to conclude that targeted programs designed to encourage deployment of services in high cost or hard-to-serve rural areas could impose additional regulatory requirements on a substantial number of carriers, including small entities. Overall, however, the Commission believes that by creating further opportunities for carriers to serve rural areas, small entities could see a significant positive economic impact as a result of a new ability to deploy their services in smaller, rural areas to which their business plans may be better suited. A more specific discussion of the impact to small entities is detailed below.

70. In this *Rural Further Notice*, the Commission seeks additional comment on the effectiveness of its current partitioning, disaggregation, and secondary markets spectrum leasing rules in the deployment of wireless service to rural areas. Specifically, the Commission seeks to develop a better understanding of the ways in which these rules may be insufficient to promote access to spectrum for all carriers, including small entities. For example, the Commission seeks comment on an alternative proposal initially suggested by a previous commenter, which would modify the current rules to provide bidding credits for auction winners that commit to partitioning portions of their licenses to rural carriers. This plan could impact all rural carriers, including small entities, by giving them greater access to spectrum. In addition, the Commission also requests comment on an alternative approach to the current spectrum leasing rules that would require carriers to take affirmative steps to enter into spectrum leasing arrangements, such as requiring them to report leasing requests made to them and the reasons the requests did not result in a lease. An alternative such as this could impact small entities by enabling them to enter smaller spectrum leasing arrangements for which they may be better suited.

71. The *Rural Further Notice* also seeks comment on the potential use of "keep what you use" relicensing mechanisms as well as renewal term substantial service requirements in order to further encourage the provisioning of wireless service to rural

areas. However, the Commission also seeks comment on the alternative raised by commenters that a "keep what you use" approach could potentially impede the efforts taken by the Commission with the secondary markets rules. In addition, the *Rural Further Notice* requests comment on an alternative approach that would adopt a substantial service construction requirement for licenses that are beyond their initial terms. In this respect, the Commission asks whether such measures would promote access to spectrum in sparsely populated areas and thereby ease the way for carriers, including small entities, to serve rural and underserved areas.

7. Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules.

72. None.

C. Initial Paperwork Reduction Act of 1995 Analysis

73. This *Rural Further Notice* does not contain either a proposed or a modified information collection. Accordingly, we need not seek comment on the impact of this *Rural Further Notice* on information collections, pursuant to the Paperwork Reduction Act of 1995.

D. Comment Dates

74. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 14, 2005, and reply comments on or before February 14, 2005. Comments and reply comments should be filed in WT Docket Nos. 02–381, 01–14, 03–202. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

75. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

76. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Best Copy and Printing, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 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. One copy of all comments should also be sent to the Commission's contractor, Natek, Inc., 445 12th Street, SW., Suite CY–B402, Washington, DC 20554. In addition, parties who choose to file by paper should provide a courtesy copy of each filing to Allen A. Barna, Mobility Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Portals I, Room 6324, Washington, DC 20554 or by e-mail to allen.barna@fcc.gov.

77. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to Natek, Inc., 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

78. Copies of all filings will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Room CY–A257, at Portals II, 445 12th St., SW., Washington, DC 20554, and will be placed on the Commission's Internet site. Copies of comments and reply comments will be available through the Commission's contractor, Natek, Inc., 445 12th St., SW., Room CY–B402, Washington, DC 20554, www.bcpweb.com, 1–800–378–3160.

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 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.

79. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Milton Price, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, 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 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, WT Docket Nos. 02–381, 01–14, 03–202, 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 pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554 (see alternative

addresses above for delivery by hand or messenger).

80. 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, 445 12th Street SW., CY-B402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger).

81. 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) 418-2555, or

via e-mail to Brian.Millin@fcc.gov. This Report and Order and Further Notice of Proposed Rulemaking can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/wtb>.

IV. Ordering Clauses

82. Pursuant to the authority contained in sections 4(i), 11, 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 161, 303(r), and 309(j), this further notice of proposed rulemaking is *adopted*.

83. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

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