

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Federal-State Joint Board on Universal Service;
Promoting Deployment and Subscribership in
Unserved and Underserved Areas, Including Tribal
and Insular Areas
CC Docket No. 96-45

ORDER and
FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: August 30, 2000

Released: August 31, 2000

Comment Date: October 12, 2000

Reply Comment Date: October 27, 2000

By the Commission:

I. INTRODUCTION

1. In this Order, we stay, on our own motion, the implementation of recently adopted federal Lifeline and Link Up assistance rule amendments only to the extent that they apply to qualifying low-income consumers living near reservations. We emphasize that this Order does not affect the implementation of the enhanced Lifeline and Link Up support for qualifying low-income consumers living on reservations. Those rules are unaffected and will become effective on schedule on October 1, 2000, as directed by the Commission. We stay the implementation of enhanced Lifeline and Link Up support for low-income consumers living near reservations pending resolution of the issues discussed in the attached Further Notice of Proposed Rulemaking (Further Notice). In the attached Further Notice, we seek additional comment on how to extend the enhanced Lifeline and Link Up measures to qualifying low-income consumers living in areas or communities that are "near reservations." Specifically, we seek

1 See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 00-208, paras. 17-18 (rel. Jun. 30, 2000) (Twelfth Report and Order) (Lifeline and Link Up assistance rule amendments applicable to eligible residents of tribal lands, consisting of qualifying low-income consumers living on or near reservations, as defined in 25 C.F.R. §§ 20.1(r) and 20.1(v)).

2 The term "reservation" 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." 25 C.F.R. § 20.1(v).

3 Twelfth Report and Order at paras. 64-66.

4 See 47 C.F.R. §§ 1.3, 1.429(k).

comment on how to define geographic areas that are adjacent to the reservations, consistent with our goal of targeting enhanced Lifeline and Link Up support to the most underserved areas of our Nation. Finally, as described in greater detail below, we extend until September 22, 2000, the date by which carriers may file data in order to receive support during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000.

## II. BACKGROUND

2. In the *Twelfth Report and Order*, we modified our rules governing federal Lifeline and Link Up support to increase access to telecommunications services and subscribership among low-income individuals living on American Indian and Alaska Native lands (referred to hereinafter as “tribal lands”). Specifically, we: (1) created a fourth tier of federal Lifeline support, consisting of up to an additional \$25 per month, to qualifying low-income individuals living on tribal lands;<sup>5</sup> (2) revised our rules governing the Link Up program to provide up to \$100 of federal support to reduce the cost of both initial connection charges and line extension charges of qualifying low-income individuals living on tribal lands;<sup>6</sup> (3) broadened our federal consumer qualification default criteria to enable low-income individuals on tribal lands to qualify for Lifeline and Link Up services by certifying their participation in certain additional means-tested assistance programs;<sup>7</sup> and (4) modified our Lifeline rules to permit eligible telecommunications carriers that are not subject to rate regulation by a state commission to receive second-tier federal Lifeline support without state commission approval and provide the local matching funds necessary to receive third-tier federal Lifeline support.<sup>8</sup> For purposes of identifying the geographic areas within which the rule amendments should apply, we determined that the term “tribal lands” should include the United States Department of Interior Bureau of Indian Affairs (BIA) definitions of “reservation” and “near reservation” contained in sections 20.1(v) and 20.1(r) of the BIA regulations, respectively.<sup>9</sup>

## III. DISCUSSION

3. Following the adoption of the definition of “tribal lands” in the *Twelfth Report and Order*, we became aware that the term “near reservation,” as it is currently defined by the BIA,<sup>10</sup> may include wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.<sup>11</sup> Such an outcome may not further our goal, as described in the *Twelfth Report and Order*, of increasing telecommunications deployment and subscribership in the most historically isolated

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<sup>5</sup> See *id.* at paras. 42-58.

<sup>6</sup> See *id.* at paras. 59-63.

<sup>7</sup> See *id.* at paras. 68-74.

<sup>8</sup> See *id.* at paras. 85-90.

<sup>9</sup> See *id.* at paras. 17-18 (citing 25 C.F.R. §§ 20.1(v) and 20.1(r)).

<sup>10</sup> The BIA definition of “near reservation” includes lands adjacent or contiguous to reservations that generally have been considered tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. See *Twelfth Report & Order* at para. 18.

<sup>11</sup> See *id.* at paras. 24-31.

and underserved regions of our Nation.<sup>12</sup> Therefore, on our own motion and pending resolution of the issues in the attached Further Notice, we stay the implementation of the above-described Lifeline and Link Up assistance rule amendments to the extent that they apply to qualifying low-income consumers located “near reservations,” as that phrase is defined in section 20.1(r) of the BIA regulations.<sup>13</sup> We do not stay the application of enhanced Lifeline and Link Up programs to low-income individuals located on “reservations,” including on lands conveyed pursuant to the Alaska Native Claims Settlement Act.

4. In the *Twelfth Report and Order*, we directed eligible carriers, interested in receiving enhanced Lifeline and Link Up support in the calendar year 2000 for services provided in the fourth quarter 2000, to submit to the Universal Service Administrative Company (USAC) by September 1, 2000, a letter from a corporate officer of the carrier containing detailed information and certifications regarding their provision of services to qualifying low-income consumers.<sup>14</sup> In this Order, we extend until September 22, 2000, the date by which carriers may file data regarding their provision of eligible services to qualifying low-income consumers living on reservations, as defined by the BIA.

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

5. In this Further Notice, we seek additional comment on how to extend the enhanced Lifeline and Link Up measures to qualifying low-income consumers living in areas or communities that are near reservations. Specifically, we seek comment on how to define geographic areas that are adjacent to the reservations or are otherwise a part of the reservation’s community of interest, in a manner that is consistent with our goal of targeting enhanced Lifeline and Link Up support to the most underserved segments of the Nation. We ask commenters to address whether the targeting of enhanced Lifeline and Link Up support to areas or communities that are “near reservations,” as that term is defined in section 20.1(r) of the BIA regulations,<sup>15</sup> is an effective way to target support to the most isolated, impoverished, and underserved regions of the country. We also invite comment on alternative ways of defining the geographic areas that are near reservations to ensure that enhanced Lifeline and Link Up support is targeted to qualifying low-income consumers living in areas adjacent to, or near, reservations that share many of the same characteristics as the reservations. In addition, to the extent that using the BIA definition of “near reservations” to target support as intended in the *Twelfth Report and Order* is not effective, we seek comment generally on how we might achieve our goal of serving geographically isolated, impoverished areas that are characterized by low subscribership.

6. Commenters are encouraged to provide detailed information to assist us in determining how enhanced Lifeline and Link Up support should be targeted. Such information should include the population of the geographical area, the number of income-eligible subscribers, the distance of each area from the nearest reservation, whether there is any legal recognition of that area by the BIA, whether the

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<sup>12</sup> See *id.* at para. 2 (citing *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 (1999)).

<sup>13</sup> A notation will be added to section 54.400(e) of the Commission’s rules stating that we have stayed the implementation of enhanced Lifeline and Link Up support for eligible residents of tribal lands to the extent that such support applies to qualifying low-income consumers living “near” reservations.

<sup>14</sup> See *Twelfth Report & Order* at paras. 64-67.

<sup>15</sup> 25 C.F.R. § 20.1(r).

area includes or is part of a Metropolitan Statistical Area,<sup>16</sup> and the level of telephone subscribership in the area. We especially seek input on these issues from the state members of the Federal-State Joint Board on Universal Service, and encourage the participation of tribal authorities and state commissions.

## V. PROCEDURAL MATTERS

### A. Paperwork Reduction Act

7. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the Federal Register of OMB approval.

### B. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA),<sup>17</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this 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 below in section V.D. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>18</sup> In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>19</sup>

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

9. This Further Notice is being issued in order to ensure that enhanced Lifeline and Link Up support is targeted to the most underserved segments of our Nation. The Commission issues the Further

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<sup>16</sup> The designation of counties as metropolitan or non-metropolitan in character is made officially by the Office of Management and Budget (OMB), with technical support from the Bureau of the Census, and is based on the size of the largest urban aggregation in a county and patterns of commuting between counties. Generally, counties socially and economically integrated with an urban cluster of at least 50,000 or more persons have been designated as metropolitan counties and the remainder as nonmetropolitan counties. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9114-15 (1997) (*Universal Service First Report and Order*), affirmed in part in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), motion for stay granted in part (Sept. 28, 1999), petitions for rehearing and rehearing en banc denied (Sept. 28, 1999) (affirming Universal Service Order in part and reversing and remanding on unrelated grounds), cert. denied in *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), cert. granted in *GTE Service Corp. v. FCC*, 120 S. Ct. 2214 (June 5, 2000), cert. denied in *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000).

<sup>17</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>18</sup> See 5 U.S.C. § 603(a).

<sup>19</sup> See *id.*

Notice of Proposed Rulemaking contained herein as a part of its implementation of the Act's mandate that "[c]onsumers in all regions of the Nation . . . have access to telecommunications and information services . . ."<sup>20</sup> The Further Notice seeks comment on how to define geographic areas that are adjacent to the reservations or are otherwise a part of the reservation's community of interest, in a manner that is consistent with our goal of targeting enhanced Lifeline and Link Up support to the most underserved segments of the Nation. The Further Notice also seeks comment on whether the targeting of enhanced Lifeline and Link Up support to areas or communities that are "near reservations," as that term is defined in section 20.1(r) of the BIA regulations, is an effective way to target support to the most isolated, impoverished, and underserved regions of the country. In addition, the Further Notice seeks comment on alternative ways of defining the geographic areas that are near reservations to ensure that enhanced Lifeline and Link Up support is targeted to qualifying low-income consumers living in areas adjacent to, or near, reservations that share many of the same characteristics as the reservations. Our objective is to fulfill section 254's mandate that "all regions of the Nation . . . have access to telecommunications."<sup>21</sup>

## 2. Legal Basis

10. The legal basis for this Further Notice is contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 1-4, 201-205, 254, 303(r), and 403.

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

11. 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.<sup>22</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>23</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>24</sup> 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 Small Business Administration (SBA).<sup>25</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>26</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>27</sup> "Small

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<sup>20</sup> 47 U.S.C. § 254.

<sup>21</sup> *Id.*

<sup>22</sup> 5 U.S.C. § 603(b)(3).

<sup>23</sup> 5 U.S.C. § 601(6).

<sup>24</sup> 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).

<sup>25</sup> Small Business Act, 15 U.S.C. § 632.

<sup>26</sup> 5 U.S.C. § 601(4).

governmental jurisdiction”<sup>28</sup> generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”<sup>29</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>30</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>31</sup> 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. The new rules proposed in this Further Notice may affect all providers of interstate telecommunications and interstate telecommunications services. Below, we further describe and estimate the number of small business concerns that may be affected by the rules proposed in this Further Notice.

12. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.<sup>32</sup> We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

13. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report.<sup>33</sup> According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

14. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>34</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent

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<sup>27</sup> 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).

<sup>28</sup> 47 C.F.R. § 1.1162.

<sup>29</sup> 5 U.S.C. § 601(5).

<sup>30</sup> U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

<sup>31</sup> *Id.*

<sup>32</sup> 13 C.F.R. § 121.201.

<sup>33</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000) (*Trends Report*).

<sup>34</sup> 5 U.S.C. § 601(3).

LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>35</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>36</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not “independently owned and operated.”<sup>37</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the rules proposed in this Further Notice.

16. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>38</sup> According to SBA’s definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>39</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. 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 wireline carriers and service providers that would qualify as small business concerns under SBA’s definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the rules proposed in this Further Notice.

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<sup>35</sup> Letter from Jere W. Glover, SBA, to Chmn. William E. Kennard, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

<sup>36</sup> 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”).

<sup>37</sup> 15 U.S.C. § 632(a)(1).

<sup>38</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>39</sup> 13 C.F.R. § 121.201, SIC Code 4813.

17. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>40</sup> The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).<sup>41</sup> According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers.<sup>42</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the rules proposed in this Further Notice.

18. *Wireless (Radiotelephone) Carriers.* 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.<sup>43</sup> According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.<sup>44</sup> 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 rules proposed in this Further Notice.

19. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules proposed herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules – which, for

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<sup>40</sup> 13 C.F.R. § 121.210, SIC Code 4813.

<sup>41</sup> See 47 C.F.R. § 64.601 *et seq.*; *Trends Report* at Table 19.3.

<sup>42</sup> *Id.* The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

<sup>43</sup> 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”).

<sup>44</sup> 13 C.F.R. § 121.201, SIC Code 4812.



both categories, is for telephone companies other than radiotelephone (wireless) companies.<sup>45</sup> To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.<sup>46</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the rules proposed in this Further Notice.

20. *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.<sup>47</sup> For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>48</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.<sup>49</sup> 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 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses 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 PCS providers as defined by SBA and the Commissioner's auction rules.

21. *SMR Licensees.* Pursuant to Section 90.814(b)(1) of the Commission's rules,<sup>50</sup> the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of both 800 MHz and 900 MHz SMR has been approved by the SBA. Any rules proposed in this proceeding may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended

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<sup>45</sup> *Id.*

<sup>46</sup> *Trends Report* at Table 19.3.

<sup>47</sup> *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

<sup>48</sup> *Id.* at para. 60.

<sup>49</sup> *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).

<sup>50</sup> 47 C.F.R. § 90.814(b)(1).

implementation authorizations. 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 less than \$15 million. We assume, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, that may be affected by the decisions and rule changes adopted in this proceeding.

22. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the rules proposed in this Further Notice.

23. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. 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.<sup>51</sup> 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.<sup>52</sup> Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

24. *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.<sup>53</sup> 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.<sup>54</sup> An auction of Phase II licenses commenced on

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<sup>51</sup> 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

<sup>52</sup> 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).

<sup>53</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997). The SBA has approved these definitions. See Letter from A. Alvarez, SBA, to D. Phythyon, FCC (Jan. 6, 1998).

<sup>54</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

September 15, 1998, and closed on October 22, 1998.<sup>55</sup> 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 percent of the Regional licenses, and 54 percent 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.<sup>56</sup> A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.<sup>57</sup> As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

25. *Narrowband PCS.* 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. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

26. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>58</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>59</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>60</sup> There are 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.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>61</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>62</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that

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<sup>55</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

<sup>56</sup> 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).

<sup>57</sup> Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC-99-24-E, DA No. 99-1287 (Wireless Telecom. Bur. July 1, 1999).

<sup>58</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>59</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

<sup>60</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>61</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>62</sup> 13 C.F.R. § 121.201, SIC Code 4812.

almost all of them qualify as small entities under the SBA definition.

28. *Fixed Microwave Services.* Microwave services include common carrier,<sup>63</sup> private-operational fixed,<sup>64</sup> and broadcast auxiliary radio services.<sup>65</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. 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.<sup>66</sup> 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.

29. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location 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 that may be affected by the rules proposed in this Further Notice includes these eight entities.

30. *Multipoint Distribution Systems (MDS).* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>67</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>68</sup> The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified

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<sup>63</sup> 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's rules).

<sup>64</sup> Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>65</sup> Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. *See* 47 C.F.R. § 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.

<sup>66</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>67</sup> 47 C.F.R. § 21.961(b)(1).

<sup>68</sup> *See 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*, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

as small entities.<sup>69</sup>

31. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.<sup>70</sup> This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the rules proposed in this Further Notice.

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

32. The measures under consideration in this Further Notice may, if adopted, result in additional reporting or other compliance requirements. For example, changes to the geographic area within which enhanced Lifeline and Link Up support is directed may, if adopted, result in increased federal universal service support obligations for telecommunications carriers required to contribute to federal universal service support mechanisms.<sup>71</sup> A modified definition of "near reservation" also may impact reporting requirements for carriers eligible to receive enhanced Lifeline and Link Up support.<sup>72</sup> If, for example, the definition of "near reservation" is expanded to include a larger geographic area, eligible carriers may be required to submit data regarding an increased number of qualifying low-income consumers. Such increased reporting requirements would be offset by increased opportunities for receipt of enhanced Lifeline and Link Up support.

#### **5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and 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 part thereof, for small entities.<sup>73</sup>

34. With respect to the possibility of increased universal service contribution requirements, the primary alternative to the proposals contained in the Further Notice, which would minimize the economic impact on small entities, would be to determine not to increase universal service support obligations. We

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<sup>69</sup> One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

<sup>70</sup> 13 C.F.R. § 121.201.

<sup>71</sup> See 47 C.F.R. § 54.706.

<sup>72</sup> See, e.g., 47 C.F.R. §§ 54.401(d), 54.407(c).

<sup>73</sup> See 5 U.S.C. § 603.

observe that section 254(d) of the Act requires that all telecommunications carriers contribute to the federal universal service support mechanisms on “an equitable and nondiscriminatory basis.”<sup>74</sup> As a result, the Commission may not propose alternatives specifically designed to minimize the economic impact on small entities. We note, however, that the Commission has established a *de minimis* exception from universal service contribution obligations for carriers whose interstate end-user telecommunications revenues in a given year are less than \$10,000.<sup>75</sup> This exception should lessen the burden on certain telecommunications carriers that meet the definition of small entities.

35. With respect to the additional reporting and compliance requirements for carriers that are eligible to receive enhanced Lifeline and Link Up support, the Commission does not seek comment on whether an exception for carriers meeting the definition of small entities is appropriate. In setting the standard for what services carriers designated as eligible telecommunications carriers must provide, the Commission has established a uniform, nationwide standard for the services to which all Americans should have access. The Commission’s rules relating to the receipt of enhanced Lifeline and Link Up support apply equally to all eligible telecommunications carriers providing services to qualifying low-income consumers. The Further Notice is consistent with these standards. Individual carriers, however, may obtain a waiver of the Commission’s rules if good cause is shown therefor.<sup>76</sup>

#### **6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.**

36. None.

#### **C. Comment Dates and Filing Procedures**

37. We invite comment on the issues and questions set forth in the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s rules,<sup>77</sup> interested parties must file comments on or before **October 12, 2000**, and reply comments on or before **October 27, 2000**. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

38. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. 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, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply.

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<sup>74</sup> 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

<sup>75</sup> See 47 C.F.R. §54.705.

<sup>76</sup> See 47 C.F.R. §1.3

<sup>77</sup> 47 C.F.R. §§ 1.415, 1.419.

39. 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. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554.

40. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a 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 lead docket number in the proceeding (CC Docket No. 96-45), 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, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

## VI. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), 403, and sections 1.3 and 1.429(k) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429(k), this ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED, as described herein. The collection of information contained within this Order is contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collection of information.

42. IT IS FURTHER ORDERED that, pursuant to sections 1 and 4(i) of the Communications Act, 47 U.S.C. §§ 151, 154(i), and sections 1.3 and 1.429(k) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429(k), the application of enhanced Lifeline and Link Up programs to qualified low-income consumers living near reservations IS STAYED pending further Commission action, as described herein.

43. IT IS FURTHER ORDERED that this order is EFFECTIVE UPON RELEASE.<sup>78</sup>

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<sup>78</sup> Good cause exists to make this order effective upon release, see 5 U.S.C. § 553(d), because it relieves a restriction and because absent this order, carriers would be subject to a September 1, 2000, deadline.

44. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary