

Standards Residual Risk and Technology Review for Ethylene Production proposed rulemaking. The document also requested public comment on the proposed action. The EPA is announcing that it will hold a public hearing. The hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. In addition, the EPA is extending the comment period by 11 days to allow for a public comment period of 30 days following the public hearing.

**DATES:** *Public hearing:* The EPA will hold a public hearing on November 6, 2019, from 9:00 a.m. (local time) until 1:00 p.m. in Washington, DC. The EPA will begin pre-registering speakers for the hearing on October 23, 2019 and end pre-registration on November 4, 2019. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

*Comments:* The comment period for the proposed rule published October 9, 2019 (84 FR 54278), is extended. The EPA must receive comments on this proposed action no later than December 6, 2019.

**ADDRESSES:** The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The EPA's website for this rulemaking, which includes the proposal and information about the hearing, can be found at: <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen>. Written comments on the proposed rule may be submitted to the EPA electronically, by mail, facsimile, or through hand delivery/courier. Please refer to the proposal (84 FR 54278) for the addresses and detailed instructions.

**FOR FURTHER INFORMATION CONTACT:** To register to speak at the hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen> or contact Virginia Hunt at (919) 541-0832 or at [hunt.virginia@epa.gov](mailto:hunt.virginia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Because this hearing is being held at a U.S. Government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering Federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses,

from the District of Columbia and all states and territories except from American Samoa. If your identification is issued by American Samoa, you must present an additional form of identification to enter the Federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information on the status of your state regarding REAL ID, go to: <https://www.dhs.gov/real-id>.

Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on Federal property for security reasons.

On November 5, 2019, the EPA will post at <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen> a general agenda for the hearing that will list pre-registered speakers in approximate order. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Virginia Hunt if they will need specific equipment or if there are other special needs related to providing comments at the hearings. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen>. While the EPA expects the hearing to go forward as set forth

above, please monitor our website or contact Virginia Hunt at (919) 541-0832 or [hunt.virginia@epa.gov](mailto:hunt.virginia@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment. Commenters should notify Virginia Hunt when they pre-register to speak that they will require the service of a translator or special accommodations such as audio description. The EPA may not be able to arrange accommodations without advanced notice.

Dated: October 16, 2019.

**Panagiotis Tsirigotis,**  
*Director, Office of Air Quality Planning and Standards.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket No. 19-105; FCC 19-83]

### Assessment and Collection of Regulatory Fees for Fiscal Year 2019

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopted a notice of proposed rulemaking that seeks comment on several proposals that will impact FY 2020 regulatory fees.

**DATES:** Submit comments on or before November 22, 2019; and reply comments on or before December 23, 2019.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 19-105, by any of the following methods:

- *Federal Communications Commission's Website:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418-0444.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), FCC 19–83; MD Docket No. 19–105, adopted on August 15, 2019 and released on August 27, 2019. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

## I. Introduction

1. In this *FNPRM*, we seek additional comment on several issues to continue reforming our assessment of regulatory fees.

## II. Further Notice of Proposed Rulemaking

### A. Assessing International Bureau Regulatees

2. The Commission's goal in assessing International Bureau regulatory fees is to recover all of the costs associated with International Bureau regulatory activities and to distribute these costs fairly among fee payers. But not all beneficiaries of the International Bureau's regulatory activities currently pay regulatory fees, and some commenters argue that we should reexamine the allocations of FTEs within the bureau. We take this opportunity to seek comment on reforming our assessment of regulatory fees for International Bureau regulatees.

3. *First*, we seek comment on whether we should assess regulatory fees on all space stations granted approval by the Commission to communicate with earth stations in the United States. In the past, the Commission has assessed regulatory fees on space stations (both geostationary and non-geostationary orbit) licensed by the Commission, but not on foreign-licensed space stations that have been granted market access by the Commission.<sup>1</sup> The Commission's policy, regulatory, international, user information, and enforcement activities all benefit non-U.S. licensed space stations that access the U.S. market. Rulemaking proceedings establishing processing procedures or service rules for satellite services apply both to U.S. licensed space stations and non-U.S. licensed space stations providing

service in the United States,<sup>2</sup> and operators of non-U.S. licensed space stations actively participate in FCC regulatory proceedings.<sup>3</sup> Non-U.S. licensed space stations are also monitored to ensure that their operators satisfy all conditions placed on their grant of U.S. market access, including space station implementation milestones and operational requirements, and are subject to enforcement action if the conditions are not met. Despite the regulatory benefits provided by the Commission to non-U.S. licensed space stations serving the United States they do not incur the regulatory fees paid by operators of U.S.-licensed space stations.

4. We seek comment on whether we should or must assess regulatory fees on non-U.S. licensed space stations serving the United States under section 9, given that non-U.S. licensed space stations appear to benefit from the Commission's regulatory activities in much the same

<sup>2</sup> See, e.g., *Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18–313, Notice of Proposed Rulemaking and Order on Reconsideration, 84 FR 4742 (Feb. 19, 2019), 33 FCC Rcd 11352 (2018); *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Non-Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 18–315, Notice of Proposed Rulemaking, 83 FR 67180 (Dec. 28, 2018), 33 FCC Rcd 11416 (2018); *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, IB Docket No. 06–160, Second Notice of Proposed Rulemaking, 84 FR 2126 (Feb. 6, 2019), 33 FCC Rcd 11303 (2018); *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 17–95, Report and Order and Further Notice of Proposed Rulemaking, 84 FR 53630 (Oct. 8, 2019) and 84 FR 5654 (Feb. 22, 2019), 32 FCC Rcd 9327 (2018); *Further Streamlining Part 25 Rules Governing Satellite Services*, IB Docket No. 18–314, Notice of Proposed Rulemaking, 84 FR 638 (Jan. 31, 2019), 33 FCC Rcd 11502 (2018); *Streamlining Licensing Procedures for Small Satellites*, IB Docket No. 18–86, Notice of Proposed Rulemaking, 83 FR 24064 (May 24, 2018), 33 FCC Rcd 4152 (2018); *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, IB Docket No. 16–408, Report and Order and Further Notice of Proposed Rulemaking, 82 FR 59972 (Dec. 18, 2017) and 82 FR 52869 (Nov. 15, 2017), 32 FCC Rcd 7809 (2017); *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 17–95, Notice of Proposed Rulemaking, 82 FR 27652 (June 16, 2017), 32 FCC Rcd 4239 (2017).

<sup>3</sup> Operators of non-U.S. licensed space stations have actively participated in nearly all of the satellite rulemaking proceedings over the course of the last several years. In addition, operators of non-U.S. space stations participate in FCC proceedings through their membership in the Satellite Industry Association, including roles as executive members. See <https://www.sia.org/join-sia/>.

manner as U.S. licensed space stations.<sup>4</sup> The Commission has previously declined to assess regulatory fees on non-U.S. licensed space stations. In 1999, the Commission observed that the Act at the time only authorized the Commission to assess space stations "licensees," *i.e.*, those licensed under Title III—which does not include non-U.S.-licensed space stations.<sup>5</sup> And the Commission sought comment on assessing such fees in 2013 and 2014 but ultimately, did not do so.<sup>6</sup> We observe that the change made to section 9 by the RAY BAUM'S Act requires the Commission to consider increases and decreases in the "number of units" subject to payment of regulatory fees, but does not state "licensees."<sup>7</sup> In this respect, the "unit" used for assessing satellite space station regulatory fees is "per operational station in geostationary orbit" or "per operational system in non-geostationary orbit."<sup>8</sup> This broader language appears equally applicable to U.S. licensed and non-U.S. licensed space stations. We seek comment on whether we may or must assess such fees.

5. We seek comment on whether assessing non-U.S. licensed space stations would promote regulatory parity among space station operators. Do any space station operators choose to seek licensing elsewhere as a means of arbitraging our current regulatory fee assessments? Is it fair or equitable to grant one class of space station operators a non-statutory exemption from fees that another class of similarly situated operators must pay? Commenters that advocate assessing regulatory fees on non-U.S. licensed space stations providing service in the United States should propose how the fees should be calculated and applied. Are there any corner cases, such as where the non-U.S. licensed space station operator accesses the U.S. market solely through one or more U.S.-

<sup>4</sup> See EchoStar August 8 *Ex Parte* Letter, Attachment, at 1.

<sup>5</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 74 FR 400089 (Aug. 11, 2009), 14 FCC Rcd 9896, 9882, para. 39 (1999) (*FY 1999 Report and Order*).

<sup>6</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 79 FR 37982 (July 3, 2014), 29 FCC Rcd 6417, 6433–34, paras. 47–50 (2014) (*FY 2014 NPRM*); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 78 FR 34612 (June 10, 2013) and 79 FR 63883 (Oct. 27, 2014), 28 FCC Rcd 7790, 7809–810, paras. 47–49 (2013) (*FY 2013 NPRM*).

<sup>7</sup> 47 U.S.C. 159(c)(1)(A).

<sup>8</sup> See Appendix D: *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, 84 FR 26234 (June 5, 2019).

<sup>1</sup> 47 CFR 1.1156.

licensed earth stations that identify a non-U.S. licensed space station as a point of communication? If the regulatory fee per earth station license is significantly less than the regulatory fee assessed per space station, would such a discrepancy provide an incentive for space station operators to see U.S. market access solely through earth station licenses as a method of regulatory fee arbitrage? How should we assess regulatory fees to avoid such arbitrage? Commenters should also discuss any other policy implications that may arise from taking such action, such as the likelihood that other countries will choose to assess fees on U.S.-licensed space stations, and whether this policy implication is still relevant in light of the number of U.S.-licensed versus non-U.S. licensed space stations.<sup>9</sup>

6. We note that the Commission previously reallocated four International Bureau FTEs as indirect for regulatory fee purposes to address the work that International Bureau FTEs conduct on market access requests by non-U.S. licensed space stations.<sup>10</sup> The effect of that decision was to require domestic broadcasters, wireless providers, ITSPs, and others to pay for the regulatory work done on behalf of foreign-licensed satellite operators. We seek comment on whether any changes to our direct International Bureau FTE allocations would be necessary if regulatory fees are adopted for non-U.S. licensed space stations.

7. *Second*, several commenters have argued that we should adjust the apportionment among fee categories within the International Bureau. For example, NASCA claims that the Commission has continued to over-recover regulatory fees from submarine cable operators because the combined submarine cable and IBC revenue requirement is relatively high compared to the satellite and earth station categories.<sup>11</sup> NASCA argues that the

other fee categories account for a much higher proportion of the FTEs' activities in the International Bureau.<sup>12</sup> And EchoStar asserts that the Commission should examine the allocation of FTEs among geostationary orbit (GSO) and non-geostationary orbit (NGSO) space and earth station operators.<sup>13</sup> We seek comment on whether the Commission should reallocate FTEs within the International Bureau. If so, should the Commission reassess the number of FTEs working on the issues of various regulatees or reallocate fees based on relative capacity of various services? Or should the Commission use some other metric to engage in the reallocation? We also seek comment on whether the Commission should change its current allocation of regulatory fees between submarine cable and satellite and terrestrial IBCs based on a plan developed by the IBC industry, with 87.6% of IBC fees paid by submarine cable and 12.4% by satellite/terrestrial facilities. Commenters should discuss whether certain apportionments within the International Bureau could be more appropriately adjusted to better reflect the amount of oversight and regulation for these industries.

#### *B. Adjusting TV and Radio Broadcaster Regulatory Fees*

8. We seek comment on two suggestions by commenters to further adjust our assessment of broadcaster regulatory fees. *First*, we seek comment on adjusting the regulatory fees paid by VHF broadcasters. The VHF television band occupies frequencies between 54 and 216 MHz and in general, VHF channels are numbered 2 to 13. Commenters on the *FY 2019 NPRM* argue that the predicted contour distance does not adequately account for all of the possible effects on the VHF station signal, such as terrain blockage, which may limit the signal, thereby reducing the population number that is actually reached.<sup>14</sup> Commenters contend that the population count is therefore overstated for VHF stations and should be adjusted downward accordingly.<sup>15</sup> Should we adjust population counts in our contour modeling to address such concerns, and if so, how?

9. *Second*, we seek comment on whether we should adopt a lower regulatory fee for full-service AM and FM broadcast radio station incubator licensees. The Commission's broadcast

incubator program is intended to create ownership opportunities for new entrants that are small businesses and promote competition and diversity in the radio broadcast industry.<sup>16</sup> MMTC asserts that regulatory fees may make it more difficult for the incubator stations to thrive, and the Commission should exempt them from regulatory fees for the term of the license.<sup>17</sup> Commenters should discuss an appropriate reduction from the regulatory fee for broadcasters, such as 50%.

### **III. Procedural Matters**

#### *A. Ex Parte Information*

10. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.<sup>18</sup> Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc,

<sup>9</sup> In 2014, the Commission observed that the majority of the space station applications and notifications during the preceding three-year period pertained to non-U.S.-licensed space stations. *FY 2014 NPRM*, 29 FCC Rcd at 6434, para. 50. In the period of 2014 through 2018, 48 approvals were given for geostationary space stations and 14 were given for non-geostationary systems, according to the International Bureau's electronic filing system, IBFS. Of these, 23 of the 48 approvals were for non-U.S. licensed geostationary space stations, and 7 of the 14 were for non-U.S. licensed non-geostationary space station systems.

<sup>10</sup> *FY 2015 Report and Order*, 80 FR 55775 (Sept. 17, 2015), 30 FCC Rcd at 10278, para. 24.

<sup>11</sup> NASCA Comments at 12; *see also* SEA-US May 1 *Ex Parte* Letter at 2 (contending that the submarine cable operators pay a disproportionate share of the regulatory fees allocated to International Bureau regulatees compared to terrestrial and satellite IBCs).

<sup>12</sup> NASCA Reply Comments at 4.

<sup>13</sup> EchoStar August 8 *Ex Parte* Letter, Attachment, at 1.

<sup>14</sup> TZS Comments at 2; NAB Reply Comments at 8–9.

<sup>15</sup> TZS Comments at 2; PMCM Comments at 2–3.

<sup>16</sup> MMTC Comments at 1.

<sup>17</sup> MMTC Comments at 2.

<sup>18</sup> 47 CFR 1.1200 through 1.1216.

.xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### B. Filing Instructions

11. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to FCC, 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

12. *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### C. Initial Regulatory Flexibility Analysis

13. An initial regulatory flexibility analysis (IRFA) is contained in this

summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking* (84 FR 26234 (June 5, 2019)). The Commission will send a copy of the *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### D. Initial Paperwork Reduction Act of 1995 Analysis

14. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

#### IV. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>19</sup> the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *FNPRM*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Further Notice*. The Commission will send a copy of the *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>20</sup> In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>21</sup>

##### A. Need for, and Objectives of, the *Further Notice*

16. The *FNPRM* seeks comment on (i) adding a new fee category for non-U.S. licensed satellite operators who have been granted access to the U.S. market; (ii) adjusting the apportionment among fee categories within the International Bureau; (iii) adjusting TV broadcaster regulatory fees for VHF licenses; and (iv) adopting a lower regulatory fee for broadcast incubator licensees. These issues may be further addressed in the annual regulatory fee Notice of Proposed Rulemaking for next year. The

<sup>19</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, Title II, 110 Stat. 847 (1996).

<sup>20</sup> 5 U.S.C. 603(a).

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

Commission is required by Congress to adopt regulatory fees each year "to recover the costs of carrying out the activities described in section 6(a) only to the extent, and in the total amounts, provided for in Appropriation Acts."<sup>22</sup>

#### B. Legal Basis

17. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended.<sup>23</sup>

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

18. 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 and policies, if adopted.<sup>24</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>25</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>26</sup> A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>27</sup>

19. *Small Entities*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.<sup>28</sup> As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.<sup>29</sup> In addition, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and

<sup>22</sup> 47 U.S.C. 159(a).

<sup>23</sup> 47 U.S.C. 154(i) and (j), 159, 159A, and 303(r).

<sup>24</sup> 5 U.S.C. 603(b)(3).

<sup>25</sup> 5 U.S.C. 601(6).

<sup>26</sup> 5 U.S.C. 601(3) (adopting by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>27</sup> 15 U.S.C. 632.

<sup>28</sup> See 5 U.S.C. 601(3)-(6).

<sup>29</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," available at [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf).

not dominant in its field.<sup>30</sup> In addition, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>31</sup> U.S. Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.<sup>32</sup> We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”<sup>33</sup> Thus, we estimate that most local government jurisdictions are small.

20. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable and IPTV) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>34</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>35</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than

1,000 employees.<sup>36</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

21. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>37</sup> According to census data from 2012, there were 3,117 establishments that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>38</sup> The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the *Further Notice*.

22. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>39</sup> According to census data from 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>40</sup> According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>41</sup> Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.<sup>42</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules proposed in this *Further Notice*.

23. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs),*

*Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>43</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>44</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>45</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>46</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>47</sup> Of this total, 70 have 1,500 or fewer employees.<sup>48</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in this *Further Notice*.

24. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>49</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>50</sup> According to Commission data, 359 companies reported that their primary

<sup>30</sup> 5 U.S.C. 601(4).

<sup>31</sup> 5 U.S.C. 601(5).

<sup>32</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf).

<sup>33</sup> The 2011 U.S. Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local governmental organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. See [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table). If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

<sup>34</sup> See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>35</sup> See 13 CFR 120.201, NAICS code 517110.

<sup>36</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>37</sup> 13 CFR 121.201, NAICS code 517110.

<sup>38</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>39</sup> 13 CFR 121.201, NAICS code 517110.

<sup>40</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>41</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>42</sup> See *id.*

<sup>43</sup> 13 CFR 121.201, NAICS code 517110.

<sup>44</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>45</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 13 CFR 121.201, NAICS code 517110.

<sup>50</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

telecommunications service activity was the provision of interexchange services.<sup>51</sup> Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules proposed in this *Further Notice*.

25. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>52</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>53</sup> U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>54</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>55</sup> All 193 carriers have 1,500 or fewer employees.<sup>56</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules proposed in this *Further Notice*.

26. *Local Resellers*. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer

employees.<sup>57</sup> Census data for 2012 show that 1,341 firms provided resale services during that year.<sup>58</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>59</sup> Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>60</sup> Of this total, an estimated 211 have 1,500 or fewer employees.<sup>61</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules proposed in this *Further Notice*.

27. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>62</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>63</sup> Census data for 2012 show that 1,341 firms provided resale services during that year.<sup>64</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>65</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>66</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>67</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules proposed in the *Further Notice*.

28. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the

categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>68</sup> Census data for 2012 shows that there were 3,117 firms that operated that year.<sup>69</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>70</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>71</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>72</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the *Further Notice*.

29. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>73</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.<sup>74</sup> Of this total, 955 firms had fewer than 1,000 employees.<sup>75</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413

<sup>57</sup> 13 CFR 121.201, NAICS code 517911.

<sup>58</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>59</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>60</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>61</sup> *Id.*

<sup>62</sup> 13 CFR 121.201, NAICS code 517911.

<sup>63</sup> *Id.*

<sup>64</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>65</sup> *Id.*

<sup>66</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>67</sup> *Id.*

<sup>68</sup> 13 CFR 121.201, NAICS code 517110.

<sup>69</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>70</sup> *Id.*

<sup>71</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>72</sup> *Id.*

<sup>73</sup> NAICS code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>74</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>75</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>51</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>52</sup> <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>53</sup> 13 CFR 121.201, NAICS code 517911.

<sup>54</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>55</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>56</sup> *Id.*

carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>76</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>77</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules proposed in this *Further Notice*.

30. *Television Broadcasting*. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”<sup>78</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule.

Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$38.5 million or less in annual receipts.<sup>79</sup> The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,387.<sup>80</sup> In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.<sup>81</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

31. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>82</sup> must be included. Our

estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

32. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.<sup>83</sup> These stations are non-profit, and therefore considered to be small entities.<sup>84</sup> There are also 2,528 low power television stations, including Class A stations (LPTV).<sup>85</sup> Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

33. *Radio Broadcasting*. This Economic Census category “comprises establishments primarily engaged in broadcasting programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>86</sup> The SBA has established a small business size standard for this category, which is: Such firms having \$38.5 million or less in annual receipts.<sup>87</sup> U.S. Census data for 2012 show that 2,849 radio station firms operated during that year.<sup>88</sup> Of that number, 2,806 operated with annual receipts of less than \$25 million per year.<sup>89</sup> According to

control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

<sup>83</sup> See FCC News Release, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>84</sup> See generally 5 U.S.C. 601(4), (6). Noncommercial television stations are not required to pay regulatory fees. 47 U.S.C. 159(e)(1)(C).

<sup>85</sup> See FCC News Release, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>86</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>87</sup> 13 CFR 121.201, NAICS code 515112.

<sup>88</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>89</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

Commission staff review of BIA Advisory Services, LLC’s *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97 percent) of 11,102 commercial radio stations had revenues of \$38.5 million or less. Therefore, the majority of such entities are small entities.

34. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>90</sup> In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.<sup>91</sup> It is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

35. *Cable Television and other Subscription Programming*. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature, e.g., limited format, such as news, sports, education, or youth-oriented. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>92</sup> The SBA has established a size standard for this industry of \$38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year.<sup>93</sup> Of this total, 319 operated with annual receipts of less than \$25 million.<sup>94</sup> Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules proposed in this *Further Notice*.

36. *Cable Companies and Systems*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.<sup>95</sup>

<sup>90</sup> “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 CFR 121.103(a)(1).

<sup>91</sup> 13 CFR 121.102(b) (an SBA regulation).

<sup>92</sup> <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>93</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>94</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=Table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=Table).

<sup>95</sup> 47 CFR 76.901(e).

<sup>76</sup> *Trends in Telephone Service*, at Table 5.3.

<sup>77</sup> *Id.*

<sup>78</sup> U.S. Census Bureau, 2012 NAICS code Economic Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>79</sup> 13 CFR 121.201, NAICS code 515120.

<sup>80</sup> See FCC News Release, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0106/DOC-311837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf).

<sup>81</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>82</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to



Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>96</sup> Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.<sup>97</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>98</sup> Current Commission records show 4,600 cable systems nationwide.<sup>99</sup> Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>100</sup> Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

37. *Cable System Operators (Telecom Act Standard)*. The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>101</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>102</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>103</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>104</sup> The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>105</sup> Although it seems certain

that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

38. *Direct Broadcast Satellite (DBS) Service*. DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>106</sup> The SBA determines that a wireline business is small if it has fewer than 1500 employees.<sup>107</sup> Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>108</sup> Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: AT&T and DISH Network.<sup>109</sup> AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that DBS service is provided only by large firms.

39. *All Other Telecommunications*. "All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or Voice over internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>110</sup> The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>111</sup> For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>112</sup> Thus, a majority of "All Other Telecommunications" firms potentially affected by the proposals in the *Further Notice* can be considered small.

40. *RespOrgs*. Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.<sup>113</sup> Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.*, Carrier RespOrgs and Non-Carrier RespOrgs.

41. *Carrier RespOrgs*. Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers,<sup>114</sup> and Wireless Telecommunications Carriers (except satellite).<sup>115</sup>

<sup>96</sup> August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>97</sup> See SNL KAGAN at [www.snl.com/interactiveX/topcableMSOs.aspx?period=2015Q1&sortcol=subscribersbasic&sortorder=desc](http://www.snl.com/interactiveX/topcableMSOs.aspx?period=2015Q1&sortcol=subscribersbasic&sortorder=desc).

<sup>98</sup> 47 CFR 76.901(c).

<sup>99</sup> See footnote 2, *supra*.

<sup>100</sup> August 5, 2015 report from the Media Bureau based on its research in COALS. See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>101</sup> 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

<sup>102</sup> See SNL KAGAN at [www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx](http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx).

<sup>103</sup> 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

<sup>104</sup> See SNL KAGAN at [www.snl.com/Interactivex/TopCableMSOs.aspx](http://www.snl.com/Interactivex/TopCableMSOs.aspx).

<sup>105</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 47 CFR 76.901(f) of the Commission's rules. See 47 CFR 76.901(f).

<sup>106</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>107</sup> NAICs code 517110; 13 CFR 121.201.

<sup>108</sup> [http://factfinder.census.gov/faces/tableservices.jspx/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices.jspx/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>109</sup> See 15th Annual Video Competition Report, 28 FCC Rcd at 1057, Section 27.

<sup>110</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>111</sup> 13 CFR 121.201; NAICs code 517919.

<sup>112</sup> [http://factfinder.census.gov/faces/tableservices.jspx/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices.jspx/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>113</sup> See 47 CFR 52.101(b).

<sup>114</sup> 13 CFR 121.201, NAICs code 517110.

<sup>115</sup> *Id.*



42. The U.S. Census Bureau defines Wired Telecommunications Carriers as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>116</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>117</sup> Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.<sup>118</sup> Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

43. The U.S. Census Bureau defines Wireless Telecommunications Carriers (except satellite) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>119</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>120</sup> Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.<sup>121</sup> Based on that data, we conclude that the majority of Carrier

RespOrgs that operated with wireless-based technology are small.

44. *Non-Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are “Other Services Related to Advertising”<sup>122</sup> and “Other Management Consulting Services.”<sup>123</sup>

45. The U.S. Census defines Other Services Related to Advertising as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).<sup>124</sup> The SBA has established a size standard for this industry as annual receipts of \$15 million dollars or less.<sup>125</sup> Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,612 operated with annual receipts of less than \$10 million.<sup>126</sup> Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

46. The U.S. Census defines Other Management Consulting Services as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.<sup>127</sup> The SBA has established a size standard for this industry of \$15 million dollars or less.<sup>128</sup> Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than \$10 million in annual receipts.<sup>129</sup> Based on this data,

we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.<sup>130</sup>

47. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016 there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

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

48. This *Further Notice* does not propose any changes to the Commission’s current information collection, reporting, recordkeeping, or compliance requirements.

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

49. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>131</sup>

50. This *FNPRM* seeks comment on issues that the Commission may address in the regulatory fee collection for Fiscal Year 2020. Specifically, the *FNPRM* seeks comment on (i) adding a new fee category for non-U.S. licensed satellite operators who have been granted access to the U.S. market; (ii) adjusting the apportionment among fee categories within the International Bureau; (iii) adjusting TV broadcaster regulatory fees for VHF licenses; and (iv) adopting a lower regulatory fee for broadcast incubator licensees. Some of these

*productview.xhtml?pid=ECN\_2012\_US\_51SSSZ4&prodType=table.*

<sup>130</sup> The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

<sup>131</sup> 5 U.S.C. 603(c)(1)–(c)(4).

<sup>116</sup> <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

<sup>117</sup> 13 CFR 120.201, NAICS code 517110.

<sup>118</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>119</sup> <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

<sup>120</sup> 13 CFR 120.201, NAICS code 517120.

<sup>121</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>122</sup> 13 CFR 120.201, NAICS code 541890.

<sup>123</sup> 13 CFR 120.201, NAICS code 541618.

<sup>124</sup> <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

<sup>125</sup> 13 CFR 120.201, NAICS code 541890.

<sup>126</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>127</sup> <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

<sup>128</sup> 13 CFR 120.201, NAICS code 514618.

<sup>129</sup> <http://factfinder.census.gov/faces/tableservices/jsf/pages/>

issues may affect small entities. For example, revising intra-bureau allocations in the International Bureau could result in changes of regulatory fees for small entities, if this is adopted. Adjusting regulatory fees for TV broadcasters that hold VHF broadcast licenses could affect small entities, and ultimately provide them a benefit in the form of lower regulatory fees, if the Commission adjusts VHF fees in the future. Incubator licensees will likely be small entities and adopting a lower regulatory fee for them would benefit small entities. These issues in the *FNPRM* may be addressed in the FY 2020 annual regulatory fee notice of proposed rulemaking.

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

51. None.

## V. Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to section 9(a), (b), (e), (f), and (g) of the Communications Act of 1934, as amended, 47 U.S.C. 159(a), (b), (e), (f), and (g), this Further Notice of Proposed Rulemaking is hereby adopted.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2019-22914 Filed 10-22-19; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 96

[AU Docket No. 19-244; FCC 19-96]

### Auction of Priority Access Licenses for the 3550–3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105; Bidding in Auction 105 Scheduled To Begin June 25, 2020

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; proposed auction procedures.

**SUMMARY:** In this document, the Commission announces auctions of Priority Access Licenses for the 3550–3650 MHz Band, designated as Auction 105. This document proposes and seeks comment on competitive bidding procedures to be used for Auction 105.

**DATES:** Comments are due on or before October 28, 2019, and reply comments are due on or before November 12, 2019.

**ADDRESSES:** Comments may be filed using the Commission's Electronic

Comment Filing System (ECFS) or by filing paper copies. *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). All filings in response to the *Auction 105 Comment Public Notice* must refer to AU Docket No. 19–244. The Commission strongly encourages interested parties to file comments electronically and requests that an additional copy of all comments and reply comments be submitted electronically to the following email address: [auction105@fcc.gov](mailto:auction105@fcc.gov).

**Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, AU Docket No. 19–244.

**Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Mary Lovejoy or Kelly Quinn in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For Priority Access License questions, Jessica Quinley in the

Wireless Telecommunications Bureau's Mobility Division at (202) 418–1991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Public Notice (*Auction 105 Comment Public Notice*), AU Docket No. 19–244, FCC 19–96, adopted on September 26, 2019 and released on September 27, 2019. The *Auction 105 Comment Public Notice* includes the following attachment: Attachment A, Summary of Licenses to Be Auctioned. The complete text of the *Auction 105 Comment Public Notice*, including its attachment, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at [www.fcc.gov/auction/105/](http://www.fcc.gov/auction/105/) or by using the search function for AU Docket No. 19–244 on the Commission's ECFS web page at [www.fcc.gov/ecfs/](http://www.fcc.gov/ecfs/). Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the *Auction 105 Comment Public Notice* in AU Docket No. 19–244.

## I. Introduction

1. By the *Auction 105 Comment Public Notice*, the Commission seeks comment on the procedures to be used for Auction 105, the auction of Priority Access Licenses (PALs) in the 3550–3650 MHz band. Bidding in the auction is scheduled to commence on June 25, 2020. By initiating the pre-bidding process for assigning licenses in Auction 105, the Commission takes an important step toward releasing flexible-use mid-band spectrum to the market and furthering deployment of fifth-generation wireless, the Internet of Things, and other advanced spectrum-based services in the United States.

## II. Licenses To Be Offered in Auction 105

2. Auction 105 will offer seven PALs in each county-based license area and counties shall be defined using the United States Census Bureau's data reflecting county legal boundaries and names valid through January 1, 2017. Each PAL consists of a 10-megahertz unpaired channel within the 3550–3650 MHz band. The auction will offer a total