

permitted to acquire partitioned 900 MHz SMR licenses either by: (1) forming bidding consortia consistent entirely of rural telephone companies to participate in auctions, and then partition the licenses won among consortia participants; or (2) acquiring partitioned 900 MHz SMR licenses from other licenses through private negotiation and agreement either before or after the auction. The Commission would require that partitioned areas conform to established geopolitical boundaries and include all portions of the wireline service area of the rural telephone company applicant that lies within the service area. This partitioning scheme would prevent rural telephone companies from having to bid on the entire MTA license to obtain licenses covering their wireline service areas. In addition, rural telephone companies would have the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers. The Commission also proposes to use the definition for rural telephone companies implemented in the *Fifth Report & Order*, PP Docket No. 93-253, 59 FR 37566 (July 22, 1994), for broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. The Commission seeks comment on this proposal.

E. Other Provisions

49. *Reduced Upfront Payments.* The Commission proposes not to adopt a reduced upfront payment option in the 900 MHz SMR service for designated entities. The other provisions adopted here render a reduced upfront payment option unnecessary and, in the absence of an entrepreneurs' block, may be too costly to administer in the 900 MHz SMR service. The Commission seeks comment on this proposal. Also, if the Commission adopts provisions for minority and women-owned entities, should the Commission apply a reduced upfront payment provision to those entities only?

50. *Set-aside Spectrum.* In the *Fifth Report & Order*, PP Docket No. 93-253, 59 FR 37566 (July 22, 1994), the Commission established entrepreneurs' blocks on which only qualified entrepreneurs, including designated entities, could bid. *See also* 47 CFR 24.709. The Commission tentatively concludes not to adopt an entrepreneurs' block for the 900 MHz SMR auction. First, the large numbers of licenses available and relatively small spectrum allocations in the 900 MHz SMR service should allow for extensive small business participation. Second,

the effectiveness of bidding credits and other provisions will be diluted, due to the smaller capital outlay anticipated for this service. Third, it may be impractical to choose particular blocks to set aside for bidding solely by entrepreneurs due to incumbent 900 MHz SMR operators in 19 of the 46 DFAs. The Commission seeks comment on this proposal. Are the capital requirements of this service anticipated to be so substantial that the Commission should insulate certain blocks from very large bidders in order to provide meaningful opportunities for designated entities?

III. Procedural Matters

Initial Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rule Making. Written public comments are requested on the IRFA.

Reason for Action: This rule making proceeding was initiated to secure comment on proposals for establishing a flexible regulatory scheme for the 900 MHz Specialized Mobile Radio (SMR) service that would promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The proposals advanced in the Second Further Notice of Proposed Rule Making are also designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). The Commission also seeks to adopt rules regarding competitive bidding in the 900 MHz SMR service based on Section 309(j) of the Communications Act, 47 U.S.C. 309(j), which delegates authority to the Commission to use auctions to select among mutually exclusive initial applications in certain services, including 900 MHz SMR.

Objectives: The Commission proposes to adopt rules for the 900 MHz SMR service that are intended to promote the growth of incumbent 900 MHz SMR systems, and emerging MTA SMR licensees, and to enhance the ability of all SMR providers to compete in the larger commercial mobile services market. The Further Notice of Proposed Rule Making seeks to establish competitive bidding procedures and a new licensing mechanism for the 900 MHz SMR service that will expedite

service to the public and promote competition in the CMRS marketplace.

Legal Basis: The proposed action is authorized under the Budget Act, Pub. L. No. 103-66, Title VI, 6002, and Sections 2(a), 3(n), 4(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. 152(a), 153(n), 154(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c) and 332(d), as amended.

Reporting, Recordkeeping, and Other Compliance Requirements: Under the proposal contained in the Further Notice of Proposed Rule Making, SMR licensees who obtain MTA-based licenses may be required to report information regarding location of their facilities and coverage of their service areas. SMR applicants seeking treatment as "designated entities" may also be subject to reporting and recordkeeping requirements to demonstrate compliance with the Commission's competitive bidding rules.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: The Further Notice of Proposed Rule Making potentially affects numerous small entities already operating 900 MHz SMR systems in Designated Filing Areas that will co-exist with 900 MHz SMR MTA licensees. The competitive bidding proposals contained in the Further Notice of Proposed Rule Making also could affect small entities seeking initial licenses in the 900 MHz SMR service. The Further Notice of Proposed Rule Making proposes special provisions in the Commission's auction rules to benefit "designated entity" applicants, including small businesses. After evaluating comments filed in response to the Further Notice of Proposed Rule Making, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: This Further Notice of Proposed Rule Making solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments: The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided above.