beneficiary protection, we are relaxing the current rule barring "direct solicitation" and are reverting to the requirements in place prior to the August 27, 2010 final rule. We did consider the alternative of not proceeding with the proposed provisions; however, we believe that the proposed rule is necessary to ensure consistency and clarity with regard to supplier standards. In addition, we are relaxing our standards to enable certain nonphysician practitioners to more easily provide access to care for our beneficiaries by reducing the burden associated with the provisions limiting licensed professionals, zoning requirements, and addressing certain contractual arrangement issues.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professionals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposed to amend 42 CFR part 424 as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—To Whom Payment Is Ordinarily Made

§ 424.57 Amended

2. Section 424.57 is amended by—

A. Removing the definition of "Direct solicitation" in paragraph (a).

B. Revising paragraph (c)(1)(ii).

C. Removing paragraph (c)(1)(iii).

D. Revising paragraphs (c)(7)(i)(A) and (c)(11).

E. In paragraph (c)(30)(ii)(B), removing the phrase "Licensed non-physician practitioners" and adding the phrase "A physical or occupational therapist" in its place.

The additions and revisions read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

(c) * * *

(1) * * *

(ii) *State licensure and regulatory requirements.* If a State requires licensure to furnish certain items or services, a DMEPOS supplier—

(A) Must be licensed to provide the item or service; and

(B) May contract with an individual or other entity to provide the licensed services unless expressly prohibited by State law.

* * * * *

(7) * * *

(i) * * *

(A)(*1*) Except for orthotic and prosthetic personnel described in paragraph (c)(7)(i)(A)(2) of this section, maintains a practice location that is at least 200 square feet beginning—

(*i*) September 27, 2010 for a prospective DMEPOS supplier;

(*ii*) The first day after termination of an expiring lease for an existing DMEPOS supplier with a lease that expires on or after September 27, 2010 and before September 27, 2013; or

(*iii*) September 27, 2013, for an existing DMEPOS supplier with a lease that expires on or after September 27, 2013.

(*2*) Orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice do not have to meet the practice location requirements in paragraph(c)(7)(i)(A)(*1*) of this section if the orthotic and prosthetic personnel are—

(i) State-licensed; or

(ii) Practicing in a State that does not offer State licensure for orthotic and prosthetic personnel.

* * * * *

(11) Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

(i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

(ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

(iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 9, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 25, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–7885 Filed 4–1–11; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 11–40; FCC 11–29]

Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a range of specific proposals and issues with the objective of promoting greater use of spectrum over unserved and underserved Tribal lands.

DATES: Comments are due on or before May 19, 2011; reply comments are due on or before June 20, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 11–40, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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 9300

East Hampton Drive, Capitol Heights, MD 20743.

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

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

• In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Stephen Johnson, Attorney Advisor, at (202) 418–0660. For additional information concerning the information collection requirements in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–518–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Spectrum over Tribal Lands Notice of Proposed Rule Making (*Spectrum over Tribal Lands NPRM*) adopted and released on March 3, 2011, in WT Docket No. 11–40. The complete text of the *Spectrum over Tribal Lands NPRM* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 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 *Spectrum over Tribal Lands NPRM* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 11–29. The *Spectrum over Tribal Lands NPRM* is also available on the Internet at the Commission's Web site or by using the search function for WT Docket No. 11–40 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in the document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Synopsis

1. While competitive market forces have spurred robust wireless communications services in many areas, connectivity for federally-recognized American Indian Tribes and Alaska Native Villages (Tribes) and other residents in many Tribal areas remains at significantly lower levels. Although the Commission has adopted a range of programs intended to promote access to wireless radio and other communications services in Tribal areas, its deep concern about the lack of wireless service on Tribal lands is prompting it to consider developing new mechanisms to foster increased access to wireless services for members of Tribes and other residents of underserved Tribal lands.

2. The *Spectrum over Tribal Lands NPRM* seeks comment on a series of proposals that have the objective of promoting greater use of spectrum over Tribal lands. It also seeks comment on what Tribal lands and Wireless Radio Services should be subject to its proposals. The proposals of the *Spectrum over Tribal Lands NPRM* are consistent with the recommendations of the National Broadband Plan, *see* Federal Communications Commission, Connecting America: The National Broadband Plan, 97–98 (rel. Mar. 16, 2010) (*National Broadband Plan*). In the *Spectrum over Tribal Lands NPRM,* the Commission makes five specific proposals. First, it proposes to expand the current Tribal licensing priority to Wireless Radio Services, establishing a licensing priority that would be applicable to licenses for fixed and mobile wireless services and available to qualifying Tribal entities for unserved or underserved Tribal lands, where such Tribal lands are within the geographic area covered by an unassigned Wireless Radio Services license. Second, the *Spectrum over Tribal Lands NPRM* seeks comment on a Tribal proposal to create a formal negotiation process under which Tribes could work with incumbent wireless licensees to bargain in good faith for access to spectrum over unserved or underserved Tribal lands. Under this proposal, a Tribal entity could request initiation of negotiations at any point in the term of a license, provided that the Tribal entity can demonstrate that the licensee failed to negotiate in good faith in connection with a previous attempt by the Tribal entity to negotiate. Third, the *Spectrum over Tribal Lands NPRM* seeks comment on a Tribal proposal that the Commission establish a process by which a qualifying Tribal entity could require a licensee to build or divest a geographic area covering unserved or underserved Tribal lands within its license area. This proposal would be applicable only in those situations where a licensee has already satisfied the construction requirements of a license. Fourth, the *Spectrum over Tribal Lands NPRM* proposes to establish a Tribal lands construction safe harbor for wireless service providers. Under this proposal, a licensee that provides a specified level of service to the Tribal land areas within the geographic area of its license would be deemed to have met its construction obligations for its entire service area. Fifth, the *Spectrum over Tribal Lands NPRM* explores potential modifications to the Commission's existing Tribal lands bidding credit rules. A Tribal lands bidding credit is available to any winning bidder in a Commission spectrum auction that commits to deploying facilities and providing wireless service to qualifying Tribal lands. The *Spectrum over Tribal Lands NPRM* seeks comment on such modifications of the Tribal lands bidding credit rules as the extension of the current 3-year construction deadline.

II. Discussion

3. The Commission seeks comment on a number of suggested approaches to promote improvements in the availability of communications services on Tribal lands, in part by considering Tribal proposals that would provide additional opportunities for greater access by Tribes to spectrum over Tribal lands. Three of the five proposals could create new opportunities for Tribes to gain access to spectrum through Wireless Radio Services licenses. The other two proposals are designed to create new incentives for licensees to deploy wireless services on Tribal lands. The Commission seeks comment on the following: (1) New spectrum access opportunities (a) A proposal to expand the current Tribal licensing priority to Wireless Radio Services, creating opportunities for access to Wireless Radio Services licenses not yet assigned; (b) A Tribal proposal to utilize the power of secondary markets, by creating a formal negotiation process under which Tribes could work with incumbent wireless licensees to bargain in good faith for access to spectrum over unserved or underserved Tribal lands; (c) A Tribal proposal to use spectrum lying fallow through an innovative build-or-divest process that would allow Tribes to build out in areas where licensees have met their construction requirement, but are not serving the Tribal lands within their service areas. (2) Service deployment incentives (a) A proposal to build on the Commission's previous work in the rural context to establish a Tribal lands construction safe harbor for wireless service providers; (b) A proposal to make modifications to the Tribal lands bidding credit.

4. The Commission contemplates extending any programs, if adopted, to federally-recognized American Indian Tribes and Alaska Native Villages and seeks comment on extending eligibility for these programs to entities owned and controlled by such Tribes. In addition, the Commission seeks comment on the appropriate definitions of Tribal lands and on the specific wireless services and Commission licensees to which all of these proposals could apply.

5. In considering several processes by which Tribes could gain access to spectrum over unserved or underserved Tribal lands, the Commission notes that the *National Broadband Plan* suggested that increasing Tribal access to and use of spectrum would create additional opportunities for Tribal communities to obtain broadband access. *See National Broadband Plan,* 97–98. In addition, the proposals the Commission talks about are consistent with the *National Broadband Plan's* recommendations that the Commission consider extending a Tribal licensing priority to wireless services, developing rules for re-licensing unused spectrum to Tribes, and encouraging use of secondary market mechanisms to facilitate deployment of services to unserved or underserved Tribal areas.

6. These proposals to provide new opportunities for Tribal access to spectrum originated in Tribal submissions relating to development of the *National Broadband Plan* and have been amplified in the context of subsequent proceedings the Commission have initiated to consider the *National Broadband Plan's* recommendations. The record thus developed indicates that certain Tribal lands have historically been left behind in the construction of infrastructure critical to communications services. More specifically, there are assertions in the record that many providers have not deployed wired services into Tribal lands and that there are instances where wireless providers have failed to build facilities on Tribal lands or have not marketed service to Native Americans. The record also indicates that one path to successful deployment of services on Tribal lands is through Tribal engagement in direct provisioning of services. Some have suggested that underutilized spectrum on Tribal lands may represent an untapped resource that could be key to improving service (including broadband service) to Tribal consumers, but have observed that under current policies Tribes face substantial obstacles obtaining spectrum access.

7. The processes to provide new opportunities for Tribes to seek access to spectrum would take into account conditions that have led to the unavailability of adequate service on some Tribal lands. The Commission seeks comment generally on those conditions and on whether the various approaches that have been suggested may help address them and achieve real benefits for Tribal consumers of wireless services. The proposals for spectrum access in general seek to make underutilized spectrum more available for use in unserved and underserved Tribal lands. In this regard, the Commission notes that proposals for Tribal access to spectrum may facilitate its broad goal of promoting increased use of unused or underutilized spectrum through secondary market mechanisms. Providing for additional mechanisms with respect to spectrum access in licensed services over unserved or underserved Tribal lands could significantly benefit those seeking such access in that there is likely to be a mature eco-system for devices and equipment where spectrum has already been licensed, so that new licensees and new customers would be able to find and purchase existing equipment in the marketplace. Ready availability of devices and equipment can promote faster and more economical buildout and service than would be possible using spectrum where new services are being deployed. The Commission seeks comment on the potential benefits of promoting additional mechanisms for Tribal access to licensed spectrum.

8. The Commission notes that there is not likely to be one answer to the problem of improving the availability of communications services on Tribal lands. Tribes may prefer to work with licensees to speed construction and service on their Tribal lands. The Commission seeks comment on how proposals for Tribal access to spectrum can also provide incentives for construction without direct Tribal access to spectrum. For example, in discussing the possibility of re-licensing spectrum over unserved or underserved Tribal lands through a build-or-divest process, the Commission seeks comment on providing a period during which the licensee could construct and provide service to specific Tribal lands. The Commission invites comment on whether such a process may spur better coordination among Tribes and licensees. In this vein, the Commission also makes proposals to provide new incentives for construction on Tribal lands by non-Tribal Wireless Radio Services licensees. The Commission seeks comment on all these proposed approaches.

A. Tribal Lands and Wireless Radio Services Subject to Proposals

9. The Commission seeks comment on appropriate definitions of Tribal lands for the purposes of the various proposals contained in the *Spectrum over Tribal Lands NPRM* and seeks comment on which Wireless Radio Services should be subject to these proposals.

i. Tribal Lands

10. The Commission seeks comment on how the term Tribal lands or Tribal land should be defined for the purposes of the proposals discussed in the *Spectrum over Tribal Lands NPRM.* The Commission proposes to define Tribal land as 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 and Indian allotments.

ii. Wireless Radio Services Subject to Tribal Lands Programs

11. The Commission proposes that all Wireless Radio Services that are licensed on a geographic area basis would be subject to the proposals discussed in the *Spectrum over Tribal Lands NPRM.* These services include: 700 MHz; Advanced Wireless Services; Narrowband and Broadband Personal Communications Service; Broadband Radio Service and Educational Broadband Service; 2.3 GHz Wireless Communications Service; 1670–1675 MHz; 1392–1395 MHz; 1432–1435 MHz; and 800 MHz and 900 MHz Specialized Mobile Radio. Licensees in the 800 MHz Cellular service are subject to licensing rules that permit third parties to acquire and provide service to unserved areas. 800 MHz Cellular licenses and other site-based services would not be subject to these proposals. The Commission invites comment on whether each of these services should be subject to the proposals. The Commission also seeks comment specifically on whether to subject the Educational Broadband Service to these changes at this time. The Commission asks commenters to address whether it should either proceed with including EBS among the Wireless Radio Services subject to Tribal lands programs or await Commission action addressing Tribal issues in the EBS proceeding. The Commission seeks comment on whether to use different licensing models for certain services, should they be subject to different treatment or exclusion from any of the proposals. Are there other wireless services that should be included?

12. The Commission proposes that, should it decide in the future to allocate or establish new wireless services, those services would be subject to any new rules that might be established in this proceeding. The Commission seeks comment on this proposal.

B. Definitions for Proposals on Tribal Access to Spectrum

13. The *Spectrum over Tribal Lands NPRM* discusses three proposals for processes that would provide new opportunities for Tribes to gain access to spectrum through Wireless Radio Services licenses. In particular the Commission proposes a Tribal licensing priority and discusses Tribal suggestions for additional processes that could provide a path by which Tribal entities could gain access to spectrum licenses with respect to geographic areas covering their Tribal lands that are unserved or underserved as these terms are defined for these purposes.

14. The Commission addresses definitions to assist in the potential implementation of all three processes for (1) qualifying Tribal entities eligible for these spectrum access opportunities, (2) unserved and underserved Tribal lands, and (3) the boundaries of the geographic area within a license to which the proposals would apply.

i. Eligibility and Legal Authority for Tribal Access to Spectrum Opportunities

15. The Commission proposes that a Tribal licensing priority should be available to qualifying Tribal entities as it defines them and seeks comment on the application of this definition to the Tribal proposals for spectrum access processes. A qualifying Tribal entity for these purposes would be an entity designated by the Tribal government or governments having jurisdiction over particular Tribal land for which the spectrum access is sought. The Commission proposes that only the following may be designated as qualifying Tribal entities: (1) Tribes; (2) tribal consortia; (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes. This is consistent with Commission rules governing the Tribal priority in the broadcast radio licensing context. The Commission proposes to use principles of control similar to the principles set forth in its part 1 rules on attribution for purposes of determining eligibility for designated entity benefits. The Commission seeks comment on this definition. In particular, the Commission seeks comment on whether it should limit eligibility for these programs to the Tribal entities that have a geographical connection to the area for which they seek spectrum access.

16. In proposing these eligibility requirements, the Commission recognizes that the legal foundation for providing opportunities to Tribes for access to spectrum is based on the federal government's trust relationship with Tribal governments.

17. The unique trust relationship between the Commission and Tribes provides a legal basis for the existing Tribal priority for broadcast radio licenses. The Commission believes that this trust relationship likewise justifies extension of the Tribal priority to wireless licenses and seeks comment on its application to the other potential spectrum access opportunities. Establishing processes that would provide Tribes with increased opportunities for access to spectrum over unserved or underserved Tribal lands would also be consistent with a number of public interest objectives with regard to Tribal lands. The Commission also believes that these proposals would satisfy the relevant constitutional analysis because any proposed benefits would be granted to Tribes and their members not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the Bureau of Indian Affairs in a unique fashion.

18. While the Commission utilizes different processes to apply the requirements of section 307(b) of the Communications Act in licensing various broadcast services and in licensing Wireless Radio Services, both the existing Tribal priority and the spectrum access proposals the Commission discusses are intended to achieve similar goals of extending service to those on Tribal lands. The Commission seeks comment on the constitutional and statutory bases for adoption of a Tribal priority for Wireless Radio Service licenses. The Commission also invites comment on whether these authorities would support adoption of the Tribal proposals to provide new spectrum access opportunities and whether any other constitutional or statutory considerations should be addressed in its analysis of those proposals.

19. The Commission proposes to base any determinations of control using the existing attribution rules that it currently applies in the context of making determinations concerning eligibility for designated entity benefits for licenses assigned by auction as provided in part 1, subpart Q of the Commission's rules. Using policies that are already being utilized in the part 1, subpart Q attribution rules for purposes of determining eligibility for a Tribal priority for Wireless Radio Service licenses will ensure that applicants and licensees will be subject to uniform requirements for the calculation of ownership, control and affiliation interests. The Commission seeks comment on whether attribution rules for determining eligibility as a qualifying Tribal entity should take into account agreements between Tribal entities and non-Tribal entities that may give rise to attribution of interests under the existing subpart Q rules, such as management and service agreements. Should there be any exclusions provided in the attribution rules for this purpose based upon any unique ownership and control issues associated with Tribal governments and Tribal entities? The Commission seeks

comment on this approach for its proposed Tribal priority as well as in connection with the Tribal proposals for other spectrum access processes.

ii. Defining Unserved or Underserved Tribal Lands

20. The Commission proposes that a Tribal priority would be available only with respect to Tribal land areas that are unserved or underserved and seeks comment on using the same definition in considering the Tribal proposals for spectrum access opportunities. The Commission proposes to define as unserved or underserved those Tribal lands where there is Wireless Radio Services coverage to not more than 65 percent of the population of the Tribal land area. The Commission invites comment on this proposed definition and seeks comment on alternatives.

21. Each of the proposals for spectrum access opportunities is intended to create greater incentives for wireless deployment in such unserved or underserved areas. The Commission believes that defining as unserved or underserved those Tribal lands with Wireless Radio Services coverage to not more than 65 percent of the population will identify the places most in need of additional efforts to expand the availability of wireless services. The Commission notes that for purposes of its Tribal Land Bidding Credit program, it uses a threshold wireline telephone subscribership rate of 85 percent. Should the Commission define unserved or underserved as coverage by Wireless Radio Services to less than or equal to 85 percent of the population as used in the context of its Tribal Land Bidding Credit program? Alternatively should the Commission define unserved or underserved as coverage that is a specified percentage below some other standard of coverage? The Commission seeks comment on these alternatives for defining unserved or underserved.

22. Some wireless services are licensed on a site-specific basis, such as 800 MHz cellular. Such site-based licensees are required to meet applicable technical standards by maintaining certain levels of signal strength throughout their entire service contours. Thus, unserved or underserved areas do not arise within the contours of licenses that are authorized on a site-specific basis. For this reason, the Tribal priority and other spectrum access opportunities would not apply to wireless services that are licensed on a site-specific basis.

iii. Defining Geographic Area for Which Tribal Access to Spectrum Opportunities May Be Available

23. The Commission proposes that a Tribal priority would be available with respect to a geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking the access. The Commission seeks comment on this proposal. More specifically, the Commission seeks comment on the interrelationship of these proposed boundaries with its proposal that the Tribal priority would be available only with respect to Tribal land areas that are unserved or underserved. To the extent that there is some coverage within the Tribal land area, should the boundaries for the Tribal spectrum access be defined by the extent of that service? The Commission also seeks comment on applying this definition to the Tribal proposals for spectrum access opportunities.

24. The Commission also seeks comment on whether the boundaries of the geographic area for a Tribal priority should include unserved or underserved near-reservation areas and other areas beyond the boundaries of Tribal lands. Would this assist in making wireless services available to Tribal members that may reside in areas just outside of a tribal reservation? If such near-reservation areas were included, the Commission proposes that any such areas would be comprised of U.S. Census block areas. Using Census block boundaries will provide more certainty for all parties and will allow the Commission to more easily administer such licenses in its existing licensing systems. Should the Commission impose a limit on the amount of such near-Tribal land areas that might be included? For instance, should such areas be limited to comprising 25 percent or less of the total geographic area for which spectrum access is sought? The Commission seeks comment on whether the Commission should include unserved or underserved near-reservation areas in defining the relevant geographic area for the Tribal proposals for spectrum access processes.

25. Finally, the Commission seeks comment on whether carving out a geographic area based on its proposed boundaries would give rise to coordination and interference issues with neighboring licensees. How can the Commission address any technical, interference or other issues that may be raised by this proposal?

C. Tribal Licensing Priority for Unassigned Wireless Radio Services Licenses

26. The Commission proposes to establish a licensing priority that would be applicable to licenses for fixed and mobile wireless services and available to qualifying Tribal entities for unserved or underserved Tribal lands where such Tribal lands are within the geographic area covered by an unassigned Wireless Radio Services license. In offering this proposal the Commission notes the significant record support for an expanded Tribal spectrum priority, which the *National Broadband Plan* recommended for the consideration of the Commission. In making this proposal, the Commission draws upon its recent adoption of a Tribal priority in the context of licensing of broadcast radio services. Under that policy, federally recognized Tribes, Tribal consortia, and entities that are 51 percent or more owned by a Tribe or Tribes, are entitled to a priority under section 307(b) of the Communications Act of 1934, as amended, when proposing FM allotments, as well as applying for AM and noncommercial educational FM stations, that would primarily serve Tribal lands. Where a federally recognized American Indian Tribe or Alaska Native Village entity applies for or proposes a broadcast station or allotment and meets the requirements for a Tribal priority, its application or proposal in most cases will receive a dispositive preference under section 307(b), and thus may prevail based on a threshold determination under that statutory provision. In the case of a proposal for new AM commercial service, for example, such a dispositive preference would result in the application proceeding to processing without competitive bidding. In the case of proposals for new noncommercial educational FM stations, the dispositive preference would result in the tentative selection of the applicant receiving the Tribal priority, without a fair distribution analysis or point system comparison.

27. The Commission seeks comment on whether making available a Tribal priority would facilitate access by Tribal entities to spectrum over Tribal lands. The Commission also seeks comment on whether any aspect of its proposed definitions should be modified specifically with respect to their application to its proposed Tribal licensing priority.

28. The Commission seeks comment on how to address a number of issues with respect to implementation of such

a Tribal priority in the context of Wireless Radio Services licenses.

i. Process and Licensing Framework for Awarding Tribal Priority

29. The Commission anticipates that it would establish a process for licensing wireless services pursuant to a Tribal priority that would generally avoid the opportunity for mutually exclusive applications. While section 309(j)(1) of the Communications Act requires the Commission to use auctions whenever it accepts mutually exclusive applications for an initial license, section 309(j)(6)(E) provides that the auction requirement of section 309(j)(1) does not relieve the Commission of the obligation in the public interest to use various means to avoid mutual exclusivity. Section 309(j)(6)(E) provides that the Commission may use engineering solutions, negotiation, threshold qualifications, service regulations and other means to avoid mutual exclusivity in licensing processes where it determines that it is in the public interest to do so. Because the Commission anticipates that there generally would be only a single qualifying Tribal entity with respect to any particular Tribal land area, the Commission believes that the public interest would be served by establishing a licensing scheme that would avoid mutually exclusive applications. Should mutually exclusive applications from Tribal entities be accepted under any Tribal priority licensing process that the Commission establishes, the Commission proposes to resolve them through competitive bidding. The Commission seeks comment on this analysis.

30. The Commission seeks comment on alternative ways to provide opportunities for eligible Tribal entities to file applications seeking a Tribal priority for licenses covering specific Tribal lands within geographic licensing areas in established Wireless Radio Services. One approach would be to provide a Tribal priority application window after the Commission has released a Public Notice proposing to offer specific initial licenses in a spectrum auction but before the window for filing auction applications opens. Alternatively, the Commission could provide a Tribal priority application window prior to any announcement of specific licenses to be offered in a spectrum auction. Assuming there is only one Tribal priority application accepted for a particular license, the portion of the license covering the Tribal land would not be offered at auction. The Commission invites comment on the relative merits and drawbacks of these alternative application approaches. In light of data regarding limited access to communications services in Tribal areas, the Commission anticipates that, under either approach, it would undertake outreach efforts, in addition to Public Notices, in order to widely disseminate information and maximize opportunities for Tribes to benefit from any new licensing priority program.

31. The Commission anticipates that if a Tribal priority is awarded, the Tribal entity will have to meet all legal, technical and financial requirements to qualify for a license in the specific Wireless Radio Service. In addition, the Commission proposes that all construction and other conditions of the relevant license would apply as if the license were awarded through the process normally applicable for the specific service. The Commission seeks comment on these proposals.

D. Tribal Proposals for Processes To Provide Access to Spectrum Licensed to Third Parties

32. The relatively low rate of wireless coverage on Tribal lands suggests that various Commission methods of promoting the deployment of wireless services including service-specific construction requirements and the secondary markets mechanisms may not be sufficient to provide the incentives necessary to ensure the provision of wireless services to Tribal lands. These proposals have been crafted to address the unique communications-related circumstances faced by those living and working on unserved and underserved Tribal lands, and do not more generally address issues of spectrum access and secondary markets beyond Tribal lands. The Commission seeks any additional information that would help us better understand and address the problems faced by those on Tribal lands in obtaining access to wireless services, and seek comment on all aspects of these proposals. The Commission also invites license holders to comment on reasons that they may not be taking advantage of existing regulatory provisions that enable them to allow other parties to access and use spectrum in areas under their license that they do not expect to use themselves.

33. The Commission discusses two proposals offered by Tribes for processes that could provide new opportunities for Tribal access to spectrum for fixed and mobile wireless services that is licensed to third parties. The first of these proposals seeks to address the challenges that Tribes have alleged they have had in encouraging wireless licensees to negotiate potential secondary market transactions involving their licensed spectrum over Tribal lands. It would create a formal negotiation process through which a Tribe that had been refused good faith negotiations regarding a secondary markets transaction within a wireless licensee's geographic area of license could require a licensee to enter into such negotiations. The second proposal aims to combat the hurdle some Tribes have encountered where wireless licensees holding spectrum over Tribal lands have met their construction requirements, but have not built out networks to provide service to Tribal lands within their geographic area of license. It would enable a Tribe to require the licensee either to build or to divest spectrum in the relevant geographic area at any time after the licensee has satisfied the construction requirements applicable to the particular license. The Commission is seeking comment on making the two opportunities it described here available only to qualifying Tribal entities with respect to geographic areas covering Tribal lands that are unserved or underserved. The Commission seeks comment on this proposed application of the definition.

34. One way to implement each of these approaches would be for the qualifying Tribal entities to initiate the specific process for seeking spectrum access with respect to assigned licenses for Wireless Radio Services by the filing of a Notice of Intent with the Commission and service of the Notice of Intent on the licensee. Such a Notice of Intent would have to provide the necessary information to demonstrate the prerequisites for the specific process sought to be initiated. The Commission would need information indicating that the filer is a qualifying Tribal entity, as well as information demonstrating that the relevant Tribal land is unserved or underserved in accordance with the definition and information defining the geographic boundaries of the area over which spectrum access is sought. The Commission seeks comment on using such a Notice of Intent. The Commission also seeks comment on providing the existing licensee with thirty days to provide information to rebut the assertion that the Tribal land in question is unserved or underserved. Would such a process for determining whether a Tribal land area meets this service threshold be sufficient?

35. The Commission seeks comment on a number of specific issues with respect to implementation of the Tribal proposals for providing spectrum access opportunities through good faith

negotiations and build-or-divest processes.

i. Good Faith Negotiations

36. The record contains Tribal proposals that the Commission adopt additional mechanisms for taking advantage of the secondary market opportunities to improve service deployment. The proposal for a good faith negotiation process is intended to address difficulties that Tribes have detailed in securing access to spectrum rights held by existing wireless licensees whose licenses cover Tribal land areas. Tribal entities have long argued that they would provide coverage to unserved and underserved Tribal lands if they could get access to the spectrum, but that they have encountered a number of difficulties in initiating and completing such negotiations.

37. Under the proposed process, Tribes could leverage existing secondary market post-licensing opportunities to secure access to spectrum over unserved and underserved Tribal lands through license partitioning or through spectrum leasing. These secondary market opportunities could involve leasing all or part of a licensee's spectrum rights or partitioning a geographic portion of a license for assignment to another entity. Robust and efficient secondary markets increase the availability of unused or unneeded spectrum capacity and may enable new users to deploy services where, for a number of possible reasons, the original licensee did not. The Commission seeks comment on whether such a good faith negotiations process would help provide Tribes with access to spectrum licensed to other parties and lead to better availability of Wireless Radio Services for consumers on Tribal lands.

38. One way to implement such a proposal would be to create a formal negotiation process that would enable a qualifying Tribal entity to require a licensee to enter into good faith negotiations regarding a secondary markets transaction with respect to any geographic portion of the licensee's license area that is covered by unserved or underserved Tribal lands. The Commission seeks comment on whether, if adopted, this process would permit a qualifying Tribal entity to file a Notice of Intent to initiate a good faith negotiations process at any time during the license term, provided that the filing Tribal entity can demonstrate that in connection with a previous attempt by the Tribe to negotiate, the licensee failed to negotiate in good faith. The Commission seeks comment generally on such a process and more specifically on whether modifications of any aspect of the generally applicable proposed definitions should be made. The Commission also seeks comment on requiring that a Notice of Intent initiating this process would have to include information about a previous negotiation attempt in which the Tribal entity believes that the licensee did not bargain in good faith. Would such a requirement raise issues regarding confidential or proprietary information? If so, what protections could the Commission establish to address those issues?

39. The Commission also seeks comment on what the contours of any formal negotiating process, if adopted, should be. Should the Commission adopt standards similar to those currently employed by the Commission in the context of retransmission consent? Under such a standard, to implement the good faith negotiation requirement, the Commission could use a two-part test for good faith. *See* Implementation of Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, *First Report and Order,* 65 FR 15559, March 23, 2000, amended on reconsideration in part by Implementation of Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, *Order on Reconsideration,* 66 FR 48219, September 19, 2001. The first part of the test would consist of a brief, objective list of negotiations standards. Such standards could include: First, a licensee may not refuse to negotiate with a Tribal entity whose Tribal lands are within its service area but to which it has not deployed service. Second, a licensee must appoint a negotiating representative with authority to bargain on partitioning and spectrum leasing issues. Third, a licensee must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a licensee may not put forth a single, unilateral proposal. By this, the Commission envisions that a licensee would have to be willing to consider and discuss alternative terms or counter-proposals, as it would appear that "take it or leave it" bargaining without consideration of reasonable alternatives could be found to be inconsistent with an affirmative obligation to negotiate in good faith. Fifth, a Tribal entity, in responding to an offer proposed by a licensee, must provide considered reasons for rejecting any aspect of the licensee's offer. Finally, if an agreement is reached, a licensee must agree to execute a written agreement that sets forth the full agreement, between the licensee and the Tribal entity. The Commission seeks comment on this potential approach should a formal negotiation process be adopted.

40. The Commission seeks comment on whether a proposed good faith test should include a totality of the circumstances standard. This approach would enable a Tribal entity to present facts to the Commission which, even though they do not allege a violation of the objective standards, given the totality of the circumstances constitute a failure to negotiate in good faith. The complainant would bear the burden of proof when making a good faith complaint.

41. The Commission seeks comment on the merits and drawbacks of it using such a good faith test for the proposed process. Should good faith negotiations be concluded within any specified time period? If so, what would be a reasonable time period? Should there be a requirement that a Tribe availing itself of the process make a showing that it has the financial wherewithal to fulfill its end of the proposed transaction?

42. The Commission also seeks comment on whether there are incentives the Commission could provide for conclusion of a license partitioning or spectrum leasing transaction. For instance, would it be beneficial to such a process if the Commission were to provide any licensee that leases spectrum rights to a qualifying Tribal entity with additional credit reflecting such coverage toward meeting its overall construction requirement for the license? Are there other incentives that might be beneficial?

43. Finally, the Commission seeks comment on whether any partitioning or spectrum leasing transaction that may result from a good faith negotiations process would be subject to all of the Commission's rules applicable to such transactions as well as all of the rules applicable to the relevant Wireless Radio Service, including rules regarding construction requirements.

ii. Build-or-Divest Process

44. The record also reflects Tribal proposals that the Commission establish a process by which a qualifying Tribal entity could require a licensee to build or divest a geographic area covering unserved or underserved Tribal lands within its license area. The notion is that such a process might be available where an existing licensee has satisfied the applicable construction requirements for the license yet Tribal

land areas remain unserved or underserved under the Commission's proposed definition. This proposal is intended to provide Tribal governments with a process under which they could expedite service to their Tribal lands. The Commission seeks comment on the efficacy of this approach.

45. The Commission seeks comment on the best way to implement such a process if adopted. For example, the Commission seeks comment on whether, if adopted, this process would permit a qualifying Tribal Entity to file a Notice of Intent to initiate a build-or-divest process only after the relevant licensee had met the applicable construction requirement. Would such a Notice of Intent for this purpose include, in addition to the information already discussed, the date on which the Commission accepted the licensee's notice of construction demonstrating that it has satisfied its final construction requirement for the license in which the unserved or underserved Tribal land is located? The Commission also seeks comment on what information should be included in a Notice of Intent filed in this context.

46. The Commission seeks comment on whether, after the filing of a Notice of Intent by a Tribe initiating a build-or-divest process, if adopted, the licensee should have to indicate whether it would agree (a) to extend coverage to the Tribal land(s), or (b) relinquish its authorization for the unserved or underserved Tribal land within the geographic area of its license. Should the authorization of any licensee that chooses to extend coverage and fails to do so within the time allowed be terminated with respect to the geographic area covered by the unserved or underserved Tribal land? The Commission also seeks comment on whether the establishment of a build-or divest process would promote coverage in these areas, and whether the rule should be prospective only or apply to licenses already granted as well.

47. The Commission seeks comment on the particular construction or performance requirements that might be imposed on any licensee that opts for extending coverage to unserved or underserved Tribal lands under the build-or-divest process. The Commission would want to establish performance criteria that would reasonably result in timely and meaningful service coverage to unserved or underserved tribal areas, but that also acknowledges the difficulties of deploying facilities in often remote and rural areas.

48. In line with the Commission's goal of expediting wireless coverage to unserved and underserved communities, the Commission seeks comment on a requirement that a licensee that opts to provide coverage under the build-or-divest process must provide the specified level of service within three years of the filing of a Notice of Intent. A relatively short period would promote the availability of service to residents of the affected tribal area. Alternatively, given the wide variety of geographic sizes and population distributions of Tribal lands nationwide, the Commission seeks comment on whether the Commission should adapt the coverage requirements and deadlines to the particular tribal population or geography. Are there any particular special circumstances that, if encountered, would merit a longer time period? Would a shorter time period be appropriate in particular situations? Are there any measures the Commission should consider that might facilitate coverage to Tribal lands under the build-or-divest process?

49. The Commission also seeks comment on the technical rules to which a license acquired through the build-or-divest process might be subject. If the Commission were to determine that the Commission should apply the additional tribal construction requirement to current licensees, the Commission seeks comment on whether the existing technical rules of such services are sufficient to protect the incumbent and the Tribal entity from interference, or whether there should be additional technical protections. Depending on the size and geography of the particular Tribal land, as well as the proximity of Tribal and non-Tribal sites to the shared boundary and to populated areas of the other licensee's geographic area, it may be possible that existing technical rules are insufficient to allow incumbent and Tribal licensees to operate effectively. Existing technical rules may, in some circumstances, unnecessarily restrict the types of services that may be deployed in a given Tribal area. The Commission seeks comment regarding the specific technical rights and protections that should be applied. The Commission seeks comment on specific signal strengths to be applied at the shared boundary, and other provisions that will protect the incumbent and tribal licensee while also permitting both to serve their licensed areas effectively. The Commission proposes that, for future wireless services, the Commission should address these technical issues in each service-specific rulemaking proceeding. The Commission invites commenters to address these technical issues with respect to specific Wireless Radio Services and particular Tribal land areas. The Commission also requests that commenters identify those technical issues or criteria that they believe would apply to Tribal areas universally, or that should be applied to particular tribal areas regardless of the wireless service involved.

50. Under the Tribal proposal for a build-or-divest process, the geographic area covered by the unserved or underserved Tribal land would become available for licensing to the qualifying Tribal entity filing the Notice of Intent if a licensee opts to relinquish its authorization rather than extend coverage or if it opts to extend coverage and fails to do so within the time allowed. The Commission seeks comment on requiring a Tribal entity to submit an application for the available authorization to demonstrate its qualifications to hold a Commission license.

51. The Commission seeks comment on applying construction requirements should an unserved Tribal geographic area be relicensed to a Tribal entity and asks how to define those requirements. The Commission seeks comment on whether it should require a Tribal licensee to provide the level of service that would otherwise be required of a licensee opting to extend coverage within three years of the grant of its license covering the Tribal land areas. The Commission seeks comment on possible alternatives that might take into account these and any relevant factors related to a new Tribal licensee's ability to deploy service.

52. The Commission also seeks comment on whether to allow transfer of or lease of spectrum rights with respect to all or part of the area licensed to the Tribal entity through the build-or-divest process. Should the Commission allow a qualified Tribal licensee to enter into any secondary market transaction involving any portion of the licensed area to a third party that does not meet the eligibility standards for a qualifying Tribal applicant? Should the Commission take any action in this regard to promote the objective of Tribal self-provisioning?

53. In the event that commenters support the ability by the Tribal licensee to enter into secondary market transactions with respect to all or a portion of its licensed area, the Commission requests that commenters specify the conditions that would apply. For example, should the Commission permit the licensee to transfer all or part of its license once it has fulfilled its required service and construction

obligations, or otherwise ensured that a certain level of service is being provided over Tribal lands? Would it be appropriate to allow secondary market transactions if the Tribal licensee indicates it is unlikely that it will be able to fulfill its construction obligations and that a third party is willing to take the license and complete construction by the appropriate deadline?

54. The Commission seeks comment on the effect of any such requirements on the ability of Tribal licensees to enter into contracts with third parties to build and operate wireless systems. Such contracts may be the most effective way for Tribes to obtain access to industry knowledge and equipment financing. The Commission seeks comment on whether and to what extent the Commission should consider leasing arrangements between qualifying Tribal entities and non-Tribal entities to confer control that would disqualify the Tribal entity.

E. Tribal Lands Construction Safe Harbor

55. The Commission proposes to establish for licenses in the Wireless Radio Services a Tribal lands construction safe harbor provision. Under this proposal, a licensee that provides a specified level of service to the Tribal land areas within the geographic area of its license would be deemed to have met its construction obligations for its entire service area. The Commission seeks comment on this proposal. In particular would such a safe harbor create an incentive for licensees to serve Tribal lands by providing an alternative method to meet construction obligations with respect to any license that includes Tribal lands within the geographic area?

56. This proposed Tribal lands construction safe harbor would resemble current Commission rules that permit some licensees in some services to satisfy their construction requirements by providing service to rural areas. For example, the Commission's rules provide that a Broadband Radio Service or Educational Broadband Service licensee has met safe harbor by, among other things, deploying a certain level of service to rural areas. For mobile service, this level is defined as coverage being deployed to at least 75 percent of the geographic area of at least 30 percent of the rural areas within the licensed area.

57. The Commission seeks comment on the specific construction requirement that must be met with respect to Tribal lands within the geographic area of a license in order to qualify for the proposed safe harbor. Specifically, for licenses with a substantial service requirement, the Commission seeks comment on providing a Tribal lands safe harbor for satisfaction of this requirement to a licensee that deploys coverage to at least 75 percent of the geographic area of the Tribal lands within the geographic area of its license area. The Commission seeks comment on what requirements to impose with respect to licenses that are subject to other forms of construction requirements. What other specific requirements should a Tribal lands safe harbor have? If such a safe harbor is established, what safeguards should be adopted to prevent licensees from exploiting the safe harbor? For example, should a licensee be permitted to avail itself of the proposed safe harbor if the tribal area does not meet a minimum geographic size or have a population that is at least ten percent of the area or population of the market as a whole?

58. The Commission also seeks comment on whether it should apply a construction multiplier rather than, or in addition to, a safe harbor as an incentive to serve Tribal lands. A licensee would be permitted to count the population or geographic coverage it has deployed to Tribal lands multiplied by a set percentage towards satisfaction of the licensee's construction requirement for the entire license area. The Commission seeks comment on the appropriate construction multiplier that would serve as an incentive for Tribal area buildout, as well as ensure adequate construction in non-Tribal areas of a licensed geographic area.

F. Potential Modification of Tribal Lands Bidding Credit Program

59. In a continuing effort to provide greater economic incentives for bringing service to Tribal lands, the Commission also seeks to explore potential modifications to its existing Tribal lands bidding credit rules. This is consistent with the record and with the recommendations of the *National Broadband Plan.* A Tribal lands bidding credit (TLBC) is available to any winning bidder in a Commission auction that commits to deploying facilities and providing wireless services to qualifying Tribal lands. Qualifying Tribal lands are defined as federally-recognized tribal areas that are either unserved by any telecommunications carrier or that have a telephone service penetration rate of 85 percent or less. The Tribal lands bidding credit is in addition to any other bidding credit for which the applicant qualifies, such as the small business bidding credit.

60. A winning bidder that meets the requirements for a TLBC is entitled to the amount of $500,000 for the first 200 square miles (518 square kilometers) of qualifying Tribal lands, and $2,500 for each additional square mile (2.590 square kilometers) above the initial 200 square miles (518 square kilometers) of qualifying Tribal lands. The TLBC is capped, depending on the amount of the winning bid: for winning bids less than or equal to $1 million, the cap is 50% of the amount bid; for winning bids between $1 million and $2 million, the cap is $500,000; and for winning bids in excess of $2 million, the cap is 35% of the amount bid.

61. A licensee receiving a TLBC is subject to a construction performance requirement. The licensee has three years from the grant of its license to construct and operate a wireless system to cover at least 75 percent of the tribal population within its market. At the end of this three-year period, the licensee must notify the Commission that it has met the 75 percent buildout requirement with regard to the Tribal lands for which the credit was awarded. If a licensee fails to make an adequate showing that it has met the 75 percent benchmark, it will be required to repay the bidding credit, plus interest, within 30 days after the conclusion of the construction period.

62. One possibility would be to extend the TLBC program's current 3-year construction deadline. Such an extension would have the advantage of providing additional time for a licensee to construct and operate a wireless system. However, it could also delay deployment of service to those residents of Tribal lands who are intended to benefit from the TLBC. The Commission seeks comment on this possible extension of the construction deadline.

63. The Commission could also consider extending the time frame to complete the certification process. This might encourage more bidders to seek the credit than would otherwise do so. The Commission invites specific comment on these proposals and their potential costs and benefits. The Commission also encourages commenters to offer any additional proposals that they may have for improving the TLBC program.

64. Are there other possible changes the Commission could make to the TLBC program that may more effectively promote service to Tribal lands? For instance, are there ways in which to promote coordination between the TLBC recipient and the relevant Tribal government that could provide additional incentives for service deployment?

III. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

65. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

B. Initial Regulatory Flexibility Analysis

66. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Spectrum over Tribal Lands NPRM.* 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 first page of the *Spectrum over Tribal Lands NPRM* summary. The Commission will send a copy of the *Spectrum over Tribal Lands NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Spectrum over Tribal Lands NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

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

67. The *Spectrum over Tribal Lands NPRM* seeks comment on proposals that would promote increased use of spectrum over Tribal lands. The proposals in the *Spectrum over Tribal Lands NPRM* are intended to increase availability of wireless communications over Tribal lands. The Commission has worked closely with federally-recognized American Indian Tribes and Alaska Native Villages (Tribes) from around the country on developing the proposals in the *Spectrum over Tribal Lands NPRM.*

68. The *Spectrum over Tribal Lands NPRM* contains five substantive proposals. First, the *Spectrum over Tribal Lands NPRM* proposes to expand the Commission's current Tribal licensing priority for broadcast licenses to certain Wireless Radio Services, creating opportunities for access to Wireless Radio Services licenses not yet assigned. Under the current Tribal priority, federally-recognized Tribes, Tribal consortia, and entities that are more than 50 percent owned by a Tribe or Tribes are entitled to a priority relative to non-Tribal entities when proposing FM allotments, as well as applying for AM and noncommercial educational FM stations, that would primarily serve Tribal lands. As envisioned in the *Spectrum over Tribal Lands NPRM,* an extension of this Tribal priority to the licensing of wireless services could provide a path by which Tribal entities could gain access to licensed spectrum licenses covering their unserved and underserved Tribal lands.

69. Second, the *Spectrum over Tribal Lands NPRM* seeks comment on a Tribal proposal to create a negotiation process under which Tribes could work with entities that hold Wireless Radio Service licenses to bargain in good faith for access to spectrum over unserved or underserved Tribal land. This proposal aims to combat the hurdle some Tribes have encountered where wireless licensees holding spectrum over Tribal lands have met their construction requirements, but have not built out networks to provide service to Tribal lands within their geographic area of license. If adopted this process would allow Tribes to take advantage of existing Commission rules and policies that allow license holders to provide other parties with access to spectrum through license partitioning or through spectrum leasing. For example, the *Spectrum over Tribal Lands NPRM* envisions that a Tribe might negotiate with a wireless licensee to lease or partition the portion of the license that covers Tribal lands.

70. Third, the *Spectrum over Tribal Lands NPRM* invites comment on a Tribal proposal to put into use licensed spectrum covering Tribal lands that is not being used to provide wireless services. As described in the *Spectrum over Tribal Lands NPRM,* a Tribal entity could initiate a process under which a licensee would be obligated to build out in unserved or underserved Tribal areas or divest the geographic license area covering unserved or underserved Tribal lands. The *Spectrum over Tribal Lands NPRM* seeks comment on making available such a process where an existing licensee has satisfied the applicable construction requirements for the license yet Tribal land areas remain unserved or underserved. This proposal is intended to provide Tribal governments with a process under which they could expedite service to Tribal lands.

71. A fourth proposal in the *Spectrum over Tribal Lands NPRM* would encourage licensees to deploy service on Tribal lands by enabling licensees that do so to satisfy, or get extra credit toward satisfying, the construction requirements for their licenses by focusing deployments on Tribal lands. This proposal is similar to previous efforts by the Commission to provide incentives for licensees to deploy service in rural areas. The *Spectrum over Tribal Lands NPRM* seeks comment on all aspects of this proposal.

72. Fifth, the *Spectrum over Tribal Lands NPRM* seeks input on possible revisions to the Commission's current Tribal lands bidding credit program. The Commission proposes consideration of a range of possible changes including: extending the current 3-year construction deadline within which the recipient of a Tribal lands bidding credit must deploy service on the relevant Tribal lands; and extension of the current 180-day deadline for an auction winner to obtain the necessary certification from the Tribal government for whose Tribal lands the applicant seeks to provide service.

73. Adoption of some or all of the proposals in the *Spectrum over Tribal Lands NPRM* may result in increased recordkeeping and reporting requirements for certain Wireless Radio Services licensees that are small businesses. The Commission therefore seeks comment on how to minimize any such associated burden on licensees that are small businesses.

ii. Legal Basis

74. The legal basis for the proposed rules and the *Spectrum over Tribal Lands NPRM* is contained in sections 1, 2, 4(i), 7, 10, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332, and 333, and 47 CFR 1.411.

iii. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

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

76. *Small Businesses.* According to estimates prepared by SBA's Office of Advocacy, in 2009, there were a total of

approximately 27.5 million small businesses nationwide.

77. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

78. *Small Governmental Jurisdictions.* 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. Census Bureau data for 2002 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

79. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite) preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, the Commission note that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of wireless firms are small.

80. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined small business for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a very small business as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA approved these definitions. The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won licenses, and one bidder that qualified as a small business entity won a license.

81. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. The winning bidder was not a small entity.

82. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in Telephone Service data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

83. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a small business for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for very small business was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won licenses in the first auction for the D, E, and F Blocks. In 1999, the Commission completed a subsequent auction of C-, D-, E-, and F-Block licenses. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

84. The Commission completed an auction of C and F Block Broadband PCS licenses in 2001. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning that auction, including judicial and agency determinations, resulted in only a portion of those C and F Block licenses being available for grant. The Commission completed an auction of C-, D-, E-, and F-Block licenses in 2005. Of the 24 winning bidders in that 2005 auction, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of licenses in the A, C, and F Blocks. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. Most recently, in 2008, the Commission completed the auction of C-, D-, E-, and F-Block Broadband PCS licenses. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

85. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses, entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

86. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B

and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

87. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* 72 FR 48814, Aug. 24, 2007, FCC 07–132, the Commission revised its rules regarding Upper 700 MHz licenses. In 2008, the Commission commenced Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

88. *700 MHz Guard Band Licensees.* In 2000, in the *700 MHz Guard Band Order,* the Commission adopted size standards for small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of these licenses was conducted in 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business.

89. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are fewer than 10 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined small business as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A very small business is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In its 2006 auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the winning bidders claimed small business status.

90. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, the Commission notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

91. *3650–3700 MHz band.* In March 2005, the Commission released a Report and Order and Memorandum Opinion and Order that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

92. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite), i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except satellite) preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, the Commission notes that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of firms using microwave services are small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

93. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and wireless cable, transmit video programming to subscribers and provide two-way high

speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted an auction of 78 BRS licenses. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Of the ten winning bidders, two bidders claimed small business status; one bidder claimed very small business status; and two bidders claimed entrepreneur status.

94. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: This 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 a combination of technologies. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

iv. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

95. The *Spectrum over Tribal Lands NPRM* seeks public comment on a broad range of possible solutions aimed at improving deployment of wireless communications services on Tribal lands. Some of these proposals could have potential reporting, recordkeeping, and compliance burdens for small businesses. For example, Tribal entities, some of which may be considered small entities, may be required to submit information or applications in order to initiate processes for spectrum access as proposed in the *Spectrum over Tribal Lands NPRM.* In addition, the adoption of the good faith negotiation and/or some of the construction proposals discussed in the *Spectrum over Tribal Lands NPRM* might require a small business that provides wireless communications service to areas including Tribal lands to keep records of its service deployment on Tribal lands. If a Tribal entity were to request the initiation of either the good faith negotiation or certain of the proposals for constructing on unserved or underserved Tribal lands, a small business WRS licensee might be required to submit service deployment and related information to the Commission if it wished to contest the initiation of either process. Similarly, the adoption of the good faith negotiation standards proposed in the *Spectrum over Tribal Lands NPRM* might require a small business WRS licensee to keep records of negotiations, if any, between itself and a Tribal entity.

96. Because the specific nature of these proposals has not been finalized, the Commission does not have a more specific estimate of potential reporting, recordkeeping, and compliance burdens on small businesses. The Commission anticipates that commenters will address the reporting, record-keeping, and other compliance proposals made in the *Spectrum over Tribal Lands NPRM,* and will provide reliable information on any costs and burdens on small businesses for inclusion in the record of this proceeding.

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

97. 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 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.

98. The proposals contained in the *Spectrum over Tribal Lands NPRM* seek to benefit Tribes and residents of Tribal lands by promoting increased use of spectrum over Tribal lands and thereby help to close communications gaps on Tribal lands. If these programs are adopted and are successful in encouraging the deployment of service to Tribal land areas, Tribes, members of Tribes and other residents of Tribal lands would benefit by having improved connectivity. These proposals, if adopted, are not intended to impose any burden on Tribal entities, though Tribes may assume additional obligations should they elect to initiate the processes described in the *Spectrum over Tribal Lands NPRM.* Therefore, this IRFA contains no analysis of the proposals' burden on Tribes.

99. The reporting and recordkeeping requirements in the *Spectrum over Tribal Lands NPRM* could have an impact on both small and large entities. While any such impact could be more financially burdensome for smaller

entities, the Commission believes the impact of such requirements would be outweighed by the benefits of promoting greater utilization of spectrum over Tribal lands. As discussed in Sections A and D of this IRFA, the adoption of the proposals in the *Spectrum over Tribal Lands NPRM* could result in increased reporting and recordkeeping burdens for small businesses that hold certain Wireless Radio Service licenses. The Commission asks for comment on alternative ways to minimize any such burdens for small businesses. The Commission expects to consider the economic impact on small businesses and other small entities, as identified in comments filed in response to the *Spectrum over Tribal Lands NPRM,* in reaching its final conclusions and taking action in this proceeding.

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

100. None.

C. Initial Paperwork Reduction Analysis

101. This document contains proposed modified information collection requirements subject to Office of Management and Budget (OMB) approval; however, we are not submitting them to OMB at this time. The Commission will submit the proposed modified information collection requirements at the Final Rule Stage. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

IV. Ordering Clauses

104. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 251(e), 301, 302, 303, 307(b), 308, 309(j), 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is hereby *adopted.*

105. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

106. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before May 19, 2011, and reply comments on or before June 20, 2011.

List of Subjects in 47 CFR Part 1

Practice and procedures, Reporting and recordkeeping requirements, Tribal lands spectrum utilization programs, Telecommunications, Competitive bidding.

Federal Communications Commission.

Bulah Wheeler,

Deputy Manager.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

2. Add a new undesignated center heading and §§ 1.1001 through 1.1004 to Subpart F to read as follows:

* * * * *

Tribal Lands Spectrum Utilization Programs

Sec.

1.1001 Introduction.
1.1002 Definitions.
1.1003 Tribal Licensing Priority.
1.1004 Tribal Lands Construction Safe Harbor.

§ 1.1001 Introduction.

The purpose of these rules is to improve the availability of wireless communications services on unserved and underserved Tribal lands by promoting greater use of spectrum over Tribal lands.

§ 1.1002 Definitions.

(a) *Qualifying Tribal entity.* For the purposes of this subpart any of the following entities, as further explained below, may be designated as a qualifying Tribal entity:

(1) a Tribe;

(2) a Tribal consortium; or,

(3) an entity that is more than 50 percent owned and controlled by a Tribe or Tribes, provided that such entity is designated by the Tribal government or governments having jurisdiction over particular Tribal land and for which the spectrum access is sought.

(b) *Tribe.* Tribe(s) means any American Indian Tribe, Nation, Band, Pueblo, or Community, or Alaska Native Village, which is acknowledged by the federal government to have a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.

(c) *Tribal consortium.* A tribal consortium is a conglomerate organization composed of two or more Tribes, or a Tribe together with an entity that is more than 50 percent owned and controlled by a Tribe or Tribes, as defined herein.

(d) *Entities that are more than 50 percent owned and controlled by a Tribe or Tribes.* For purposes of this subpart, an entity will be considered to be more than 50 percent owned and controlled by a Tribe or Tribes where the Tribe or Tribes have both *de jure* and *de facto* control of the entity. *De jure* control of an entity is evidenced by ownership of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control of an entity is determined on a case-by-case basis. A Tribe or Tribes must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant seeking eligibility as a qualifying Tribal entity:

(1) The Tribe(s) constitutes or appoints more than 50 percent of the board of directors or management committee of the entity;

(2) The Tribe(s) has authority to appoint, promote, demote, and fire senior executives that control the day to day activities of the entity;

(3) The Tribe(s) plays an integral role in the management decisions of the entity; and

(4) The Tribe(s) has the authority to make decisions or otherwise engage in practices or activities that determine or significantly influence:

(i) the nature or types of services offered by such an entity;

(ii) the terms upon which such services are offered; or

(iii) the prices charged for such services.

(e) An applicant seeking eligibility to be a qualifying Tribal entity must describe on its long-form application how it satisfies the requirements of § 1.1002(b) through (d), and must list and summarize on its long-form application all agreements that affect its

eligibility such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, and all other agreements, including oral agreements, establishing *de facto* and *de jure* control of the qualifying Tribal entity. A qualifying Tribal entity also must provide the date(s) on which each of the agreements listed was entered into.

(f) An applicant seeking eligibility as a qualifying Tribal entity must attach with its long-form application a certification from the Tribal government stating that the applicant is authorized by the Tribal government to site facilities and provide service on its Tribal lands.

(g) *Tribal land(s).* 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.

(h) *Unserved and/or underserved Tribal land(s).* Those Tribal lands with Wireless Radio Services coverage to no more than 65 percent of the population of the Tribal land area based on the most recently available U.S. Census Data.

§ 1.1003 Tribal Licensing Priority.

During a window announced by the Commission for the filing of applications for a Tribal licensing priority, a qualifying Tribal entity having jurisdiction over unserved or underserved Tribal lands within the geographic area of a Wireless Radio Service license that has not been assigned, may submit a long-form license application for an authorization to use the Tribal land portion of that license. In the event that license applications filed by qualifying Tribal entities are mutually exclusive, the Commission will resolve these mutually exclusive applications by means of a competitive bidding process open only to those qualifying Tribal entities.

§ 1.1004 Tribal Lands Construction Safe Harbor.

Satisfaction of Construction Requirements through Service to Tribal Lands. A Wireless Radio Licensee with Tribal lands within the geographic area of its license will be deemed to have satisfied its construction obligations for its entire service area if it deploys coverage to at least 75% of the geographic area of such Tribal lands.

[FR Doc. 2011–7825 Filed 4–1–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[CG Docket No. 11–47; FCC 11–38]

Contributions to the Telecommunications Relay Service Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to implement the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA) which requires each interconnected voice over Internet Protocol (VoIP) service provider and each provider of non-interconnected VoIP service to participate in and contribute to the Telecommunications Relay Services (TRS) Fund. The law directs that within one year after the date of enactment of the CVAA, such VoIP providers shall participate in and contribute to the Fund in a manner prescribed by the Commission by regulation. The regulations must oblige such participation in a manner that is consistent with and comparable to the obligations of other contributors to the fund.

DATES: Comments are due on or before May 4, 2011. Reply comments are due on or before May 19, 2011. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before June 3, 2011.

ADDRESSES: You may submit comments, identified by [CG Docket No. 11–47], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 11–47. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.
- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and 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 response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.* 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. All hand deliveries must be held together with rubber bands or fasteners.
- Envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

In addition, document FCC 11–38 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via e-mail at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov* and Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2075 or e-mail *Rosaline.Crawford@fcc.gov.*

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission,