

*Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

*National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action.

Today's action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 28, 2002.

**William J. Muszynski,**  
Acting Regional Administrator, Region 2.  
[FR Doc. 02-8686 Filed 4-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[MD Docket No. 02-64; FCC 02-92]

**Assessment and Collection of Regulatory Fees for Fiscal Year 2002**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2002. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and (b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

**DATES:** Comments are due on or before April 23, 2002, and reply comments are due on or before May 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Terry Johnson, Office of Managing Director at (202) 418-0445 or Roland Helvajian, Office of Managing Director at (202) 418-0444.

**SUPPLEMENTARY INFORMATION:**

*Adopted:* March 22, 2002.

*Released:* March 27, 2002.

By the Commission:

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**I. Introduction**

1. By this *Notice of Proposed Rulemaking* (NPRM), the Commission begins a proceeding to revise its Schedule of Regulatory Fees to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the

Communications Act, as amended, has required us to collect for Fiscal Year (FY) 2002.<sup>1</sup>

2. Congress has required that we collect \$218,757,000 through regulatory fees to recover the costs of our competition, enforcement, spectrum management, and consumer information activities for FY 2002.<sup>2</sup> This amount is \$18,611,000 or approximately 9.3% more than the amount that Congress designated for recovery through regulatory fees for FY 2001.<sup>3</sup> We are proposing to revise our fees in order to collect the amount that Congress has specified, as illustrated in a new fee schedule in Attachment D.

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 159(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.<sup>4</sup>

## II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.<sup>5</sup> See Attachment G for a description of these activities. In our *FY 1994 Fee Order*,<sup>6</sup> we adopted the Schedule of Regulatory Fees that Congress established, and prescribed rules to govern payment of the fees, as required by Congress.<sup>7</sup> Subsequently, we modified the fee schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our prior experience in administering the program.<sup>8</sup>

5. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (b)(3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.<sup>9</sup> Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise

the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees.<sup>10</sup>

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services . . ."<sup>11</sup>

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the cost of regulating various services that are subject to a fee, and for other purposes.<sup>12</sup> The Commission is in the process of planning a new cost accounting system, which we anticipate to be operational after sufficient testing in FY 2004. For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, in FY 1997, we found that some fee categories received disproportionately high cost allocations. We adjusted for these high cost allocations by redistributing the costs, and maintained a 25% limit on the extent in which service fee categories can be increased. We believed that this 25% limit would enable cost-based service fees to be implemented more gradually over time. We thought that this methodology, which we continued to use for FY 1998, would enable us to develop a regulatory fees schedule that reflected our cost of regulation. Over time, as the cost of regulation increases or decreases, this methodology would enable us to revise the fee schedule to reflect those services whose regulatory costs had changed.

8. However, we found that developing a regulatory fee structure based on available flawed cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation did not normalize to an acceptable level. We concluded that it would be best to discontinue attempts to base the entire schedule on our available but flawed cost data. Instead, we chose to base the FY 1999 through FY 2001 fees on the basis of "Mandatory Adjustments" only. We have found no reason to deviate from this policy for FY 2002. However,

we are proposing to apply the "Mandatory Adjustments" as we did in FY 2001 to better incorporate changes in payment units. As noted above, however, we expect to have a new cost accounting system in place in FY 2004. Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.<sup>13</sup>

## III. Discussion

### A. Summary of FY 2002 Fee Methodology

9. As noted above, Congress has required that the Commission recover \$218,757,000 for FY 2002 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.<sup>14</sup>

10. In developing our proposed FY 2002 fee schedule, we first estimated the number of payment units<sup>15</sup> for FY 2002. Then we compared the FY 2001 revenue estimate amount to the \$218,757,000 that Congress has required us to collect in FY 2002 and pro-rated the difference among all the existing fee categories. Finally, we divided the FY 2002 payment unit estimates into the pro-rated FY 2002 revenue estimates to determine the new FY 2002 fees. See Attachment C.

11. Once we established our tentative FY 2002 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. Collection procedure matters are discussed in paragraphs 17–23.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other important information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2002.<sup>16</sup> In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 2002 regulatory fees.

<sup>13</sup> 47 U.S.C. 159(b)(4)(B).

<sup>14</sup> 47 U.S.C. 159(a).

<sup>15</sup> Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

<sup>16</sup> We also will incorporate a similar Attachment in the *FY 2002 Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees that will be adopted in the *FY 2002 Report and Order*.

<sup>1</sup> 47 U.S.C. 159(a).

<sup>2</sup> Public Law 107–77 and 47 U.S.C. 159(a)(2).

<sup>3</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 66 FR 36177 (2001).

<sup>4</sup> 47 CFR 1.1152 through 1.1156.

<sup>5</sup> 47 U.S.C. 159(a).

<sup>6</sup> 59 FR 30984 (1994).

<sup>7</sup> 47 U.S.C. 159(b), (f)(1).

<sup>8</sup> 47 CFR 1.1151 *et seq.*

<sup>9</sup> 47 U.S.C. 159(b)(2), (b)(3).

<sup>10</sup> 47 U.S.C. 159(b)(2).

<sup>11</sup> 47 U.S.C. 159(b)(3).

<sup>12</sup> 47 U.S.C. 159(i).

*B. Development of FY 2002 Fees*

## i. Adjustment of Payment Units

13. In calculating FY 2002 regulatory fees for each service, we adjusted the estimated payment units for each service to reflect substantial changes in payment units for many services since adopting our FY 2001 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. Attachment B summarizes how revised payment units were determined for each fee category.<sup>17</sup>

## ii. Calculation of Revenue Requirements

14. We compared the sum of all estimated revenue requirements for FY 2001 to the amount that Congress has required us to collect for FY 2002 (\$218,757,000), which is approximately 9.3% more total revenue than in FY 2001. We increased each FY 2001 fee revenue category estimate by 9.3% to provide a total FY 2002 revenue estimate of \$218,757,000. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

## iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. See Attachment C.

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Unless otherwise noted herein, nothing else in this proceeding is intended to change any policies or procedures established or reaffirmed in the *FY 2001 Order* (66 FR 36177).

<sup>17</sup> It is important to note also that Congress required a revenue increase in regulatory fee payments of approximately 9.3 percent in FY 2002, which will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increases from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

*C. Procedures for Payment of Regulatory Fees*

17. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. See paragraphs 18, 19, and 20. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) "Standard" fees, (2) "large" fees, and (3) "small" fees.

## i. Annual Payments of Standard Fees

18. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

## ii. Installment Payments for Large Fees

19. While time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible, if practicable, to make installment payments. Eligibility for installment payments will be based upon the amount of either a single regulatory fee payment or a combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. However, because of time constraints in collecting and recording the fees, it is unlikely that there will be sufficient time for installment payments. Therefore, regulatees who may be eligible to make installment payments

may be required, if time constraint permits, to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

## iii. Advance Payments of Small Fees

20. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers noted.<sup>18</sup> We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** per authority delegated to the Managing Director.

## iv. De minimis Fee Payment Liability

21. As we have in the past, we are proposing that regulatees whose *total regulatory fee liability*, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 2002.

<sup>18</sup> Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

v. Standard Fee Calculations and Payment Dates

22. The time for payment of standard fees and any installment payments will be announced in our *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees and permittees of Mass Media services, we propose that the responsibility for payment of regulatory fees rests with the holder of the permit or license on October 1, 2001. However, in instances where a Mass Media service license or authorization is *transferred or assigned after October 1, 2001*, and arrangements to pay have not been made between the two parties, the fee is still due and we propose that the fee shall be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Common Carrier and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before *October 1, 2001*. A pending change in the status of a license or permit that is not granted as of that date is not taken into account, and the fee is based on the authorization that existed on October 1, 2001.

23. For regulatees whose fees are based upon a subscriber, unit or circuit count, such as cable subscriber services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services, the number of a regulatees' subscribers, units or circuits on *December 31, 2001*, will be used to calculate the fee payment.<sup>19</sup> A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 2001, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due. For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2001.

24. Because of the time constraint in paying regulatory fees, the Commission

*highly recommends* that entities submitting *more than twenty-five (25) Form 159-C's* use the *electronic fee filer program* when sending in their regulatory fee payment. This will not only reduce errors that can result, but also reduce the amount of paperwork that is received by the Commission. Furthermore, as was the practice last year, the Commission will, for the convenience of payers, accept fee payments made *in advance* of the normal formal window for the payment of regulatory fees.

vi. Mandatory Use of FCC Registration Number (FRN)

25. As a result of a Commission proceeding adopted on August 24, 2001 and effective December 3, 2001, the use of the FCC Federal Registration Number (FRN) is now mandatory by anyone doing business with the Commission, including those subject to the regulatory fee program.<sup>20</sup> Failure to follow the directions regarding the use of the FRN will result in a delay in crediting the payment to the proper account, which may result in the initiation of a delinquent collection effort against the entity.

vii. Population Count of AM and FM Radio Stations

26. The population count for radio stations is not derived merely by a census count of the surrounding community, but from a formula that incorporates various indices such as power, tower size, class size, and other technical attributes. The methodology for calculating the population count is listed in Attachment H of the Assessment and Collection of Regulatory Fees, Notice of Proposed Rulemaking, and Report and Order. Because a number of components are used to calculate the population city grade of each station, it is possible that in some instances the calculation of the population count and related fee may inadvertently be incorrectly stated in the Mass Media Regulatory Fees Public Notice that identifies the radio station call signs and their respective fees. Therefore, we propose that if a licensee has paid the fee listed in the Mass Media Regulatory Fees Public Notice and it is later determined that the population calculation for the station is incorrect, and a letter verifying the correct population count is provided from the supplier of the population calculation, the Commission will refund the fee amount overpaid. Similarly, we also propose that if it is determined that the population calculation and related

fee for the station has been understated, and the Commission obtains verification of the correct population calculation from the supplier of the population calculation, the Commission will bill the licensee for the difference in fees that should have been paid.

27. We further propose that we will make corrections for such population calculation errors, whether by refunding or billing for corrected fee amounts, only for three (3) fiscal years after the error appears in the Mass Media Regulatory Fees Public Notice. For example, in the case of a population calculation error resulting in an overstated fee amount, if the Mass Media Regulatory Fees Public Notice for FY 2002 contains a population calculation and related fee error and the licensee provides the appropriate verification of the error before September 30, 2005, the Commission will refund the amount overpaid. Similarly, in a case where a population calculation error results in an understated fee amount, if the Fiscal Year 2002 population calculation error is discovered and verified before September 30, 2005, the Commission will bill the licensee for the difference between the correct fee and the fee listed in the Fiscal Year 2002 Mass Media Regulatory Fees Public Notice. We believe that three years provides a reasonable time for a licensee or the Commission to discover and seek to rectify population calculation errors, and that limiting the time for correction of fees will protect both licensees and the Government from being subject to indefinite potential obligations to make corrective payments.

viii. Technical Changes

28. Presently, regulatory fee payments may be made by Visa and MasterCard credit cards. When paying by credit card, regulatees have two options: (1) Regulatees may submit their payment by using the Commission's FeeFiler (an electronic payment system), or (2) Regulatees may provide the requested credit card information on the FCC Form 159, (Remittance Advice), and mail it to the address described in the Public Notice. Refunds of regulatory fees paid by credit cards are made by check payable to the regulatory fee payor. *No refunds are issued to the card processor.* To expand the use of other types of credit cards, the Commission proposes to accept American Express and Discover credit cards in addition to Visa and MasterCard credit cards.

29. It has come to our attention that we did not make corresponding revisions to certain descriptive portions of §§ 1.1152 and 1.1157 of our rules

<sup>19</sup> Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 2001, rather than on a count as of December 31, 2001.

<sup>20</sup> 66 FR 47890 (September 14, 2001).

when the regulatory fees for wireless radio services were amended to include standard annual regulatory fees based on payment units for Commercial Mobile Radio Service (CMRS) and CMRS messaging. We propose to make the necessary changes to these descriptive portions of §§ 1.1152 and 1.1157 of our rules to reflect that it is no longer the case that all regulatory fee payments for wireless radio services are paid in advance when applications are filed.

30. The Commission incurs transaction costs when processing refunds. The Commission has determined that, in some instances, the transaction costs outweigh the dollar amount of the refund. Therefore, in terms of more efficient money management, the Commission proposes that payments in excess of an application or regulatory fee will be refunded only if the overpayment is \$10 or more.

#### D. Schedule of Regulatory Fees

31. The Commission's proposed Schedule of Regulatory Fees for FY 2002 is contained in Attachment D of this NPRM.

#### E. Enforcement

32. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). The Commission assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial or underpayment of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. See 47 CFR 1.1164. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all

authorizations held by the delinquent payor. See 47 CFR 1.1164.

#### IV. Procedural Matters

##### A. Comment Period and Procedures

33. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 23, 2002, and reply comments on or before May 3, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>21</sup>

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

35. 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 (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Acting Secretary, William F. Caton, at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission.

36. Parties who choose to file by paper should also submit their

comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1-C807, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, MD Docket No. 02-64), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This NPRM can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/cpd>.

37. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554, and through the Commission's Electronic Comment Filing System (ECFS) <http://www.fcc.gov/e-file/ecfs.html>.

##### B. Ex Parte Rules

38. 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.<sup>22</sup>

##### C. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act,<sup>23</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A.

<sup>21</sup> Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

<sup>22</sup> 47 CFR 1.1203 and 1.1206(b).

<sup>23</sup> See 5 U.S.C. 603.

Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer and Governmental Affairs Bureau (CGA), Reference Information Center, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

#### D. Authority and Further Information

40. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.<sup>24</sup> It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau (CGA), Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

41. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225-5322.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

#### Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>25</sup> an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2002*.<sup>26</sup> 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 IRFA provided in the comment period section of the *NPRM*. The Commission will send a copy of the *NPRM*, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal**

**Register**. This present Initial Regulatory Flexibility Analysis (IRFA) conforms to the RFA.<sup>27</sup>

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

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of \$218,757,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

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

3. The IRFA 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.<sup>28</sup> The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>29</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>30</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>31</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>32</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>33</sup> "Small governmental jurisdiction"<sup>34</sup> generally means "governments of cities, counties,

towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>35</sup> As of 1992, there were approximately 85,006 governmental entities in the United States.<sup>36</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.<sup>37</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

#### Cable Services or Systems

4. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.<sup>38</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.<sup>39</sup>

5. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>40</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>41</sup> Since then, some of those companies may have grown to serve over 400,000

<sup>24</sup> 5 U.S.C. 601(5).

<sup>25</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>26</sup> *Id.*

<sup>27</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

<sup>28</sup> 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

<sup>29</sup> 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

<sup>30</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>27</sup> 5 U.S.C. 604.

<sup>28</sup> 5 U.S.C. 603(b)(3).

<sup>29</sup> 5 U.S.C. 601(6).

<sup>30</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

<sup>31</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>32</sup> 5 U.S.C. 601(4).

<sup>33</sup> 1992 *Economic Census*, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>34</sup> 47 CFR 1.1162

<sup>24</sup> 47 U.S.C. 154(i)-(j), 159, & 303(r).

<sup>25</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>26</sup> 66 FR 19681 (April 16, 2001).

subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

6. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>42</sup> The Commission has determined that there are 68,980,000 subscribers in the United States.<sup>43</sup> Therefore, we estimate that an operator serving fewer than 689,800 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>44</sup> Based on available data, we estimate that the number of cable operators serving 689,800 subscribers or less totals 1,450.<sup>45</sup> We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,<sup>46</sup> and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. *Other Pay Services.* Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),<sup>47</sup> multipoint distribution systems (MDS),<sup>48</sup> satellite master antenna systems (SMATV), and subscription television services.

### *Common Carrier Services and Related Entities*

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, which encompasses data compiled from FCC Form 499—A Telecommunications Reporting Worksheets.<sup>49</sup> According to data in the most recent report, there are 5,679 interstate service providers.<sup>50</sup> These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

9. We have included small incumbent local exchange carriers (LECs)<sup>51</sup> in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>52</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>53</sup> We have therefore included small incumbent LECs in this IRFA analysis, although we emphasize that this IRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992,

there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>54</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>55</sup> It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed rules, if adopted.

11. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>56</sup> According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.<sup>57</sup> All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by the proposed rules, if adopted.

12. *Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone*

<sup>49</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Table 1 (November 2001).

<sup>50</sup> FCC, *Telecommunications Provider Locator* at Table 1.

<sup>51</sup> See 47 U.S.C. 251(h) (defining "incumbent local exchange carrier").

<sup>52</sup> 5 U.S.C. 601(3).

<sup>53</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

<sup>54</sup> U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

<sup>55</sup> See generally 15 U.S.C. 632(a)(1).

<sup>56</sup> *1992 Census*, *supra*, at Firm Size 1-123.

<sup>57</sup> 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

<sup>42</sup> 47 U.S.C. 543(m)(2).

<sup>43</sup> *Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132, Seventh Annual Report, FCC 01-1 (released January 8, 2001), Table C-1.

<sup>44</sup> *Id.* 47 CFR 76.1403(b).

<sup>45</sup> *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA-01-0158 (released January 24, 2001).

<sup>46</sup> We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

<sup>47</sup> Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

<sup>48</sup> Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

*Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>58</sup> The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the FCC 499-A Telecommunications Reporting Worksheets.<sup>59</sup>

According to our most recent data, there are 1,329 incumbent and other LECs, 532 CAPs and competitive local exchange carriers (CLECs), 229 IXCs, 22 OSPs, 936 payphone providers, 32 prepaid calling card providers, 38 other toll carriers, and 710 local and toll resellers.<sup>60</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity incumbent and other LECs, 532 CAPs/CLECs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 local and toll resellers, 32 prepaid calling card providers, and 38 other toll carriers that may be affected by the proposed rules, if adopted.

#### *International Services*

13. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).<sup>61</sup> This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>62</sup> According to the Census Bureau, there were a total of 848 communications services providers,

<sup>58</sup> 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

<sup>59</sup> See *Telecommunications Provider Locator* at Table 1.

<sup>60</sup> *Telecommunications Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

<sup>61</sup> An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

<sup>62</sup> 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$10.0 million.<sup>63</sup> The Census report does not provide more precise data.

14. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

15. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

16. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

17. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

18. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

19. *Mobile Satellite Earth Stations.* There are 21 licensees. We do not

<sup>63</sup> 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

20. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

21. *Space Stations (Geostationary).* There are presently an estimated 71 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

22. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

23. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."<sup>64</sup> This definition provides that a small entity is one with \$11.0 million or less in annual receipts.<sup>65</sup> Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

#### *Mass Media Services*

24. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.<sup>66</sup> The SBA

<sup>64</sup> 13 CFR 121.201, NAICS codes 51321 and 51322.

<sup>65</sup> 13 CFR 121.201, NAICS codes 51321 and 51322.

<sup>66</sup> While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *NPRM* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *NPRM*, and to

defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.<sup>67</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>68</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>69</sup> Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>70</sup> Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.<sup>71</sup> There were 1,509 television stations operating in the nation in 1992.<sup>72</sup> That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 30, 2001.<sup>73</sup> For 1992,<sup>74</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.<sup>75</sup> Only commercial stations are subject to regulatory fees.

consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See *Report and Order in MM Docket No. 93-48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

<sup>67</sup> 13 CFR 121.201, NAICS code 51312.

<sup>68</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9* (1995) (*1992 Census, Series UC92-S-1*).

<sup>69</sup> *Id.*; see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

<sup>70</sup> *1992 Census, Series UC92-S-1, at Appendix A-9.*

<sup>71</sup> *Id.*, NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

<sup>72</sup> FCC News Release No. 31327 (January 13, 1993); *1992 Census, Series UC92-S-1, at Appendix A-9.*

<sup>73</sup> FCC News Release, "Broadcast Station Totals as of September 30, 2001."

<sup>74</sup> A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92-S-1, at III.*

<sup>75</sup> The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed.

25. Additionally, the SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.<sup>76</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>77</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>78</sup> Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.<sup>79</sup> However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.<sup>80</sup> The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.<sup>81</sup> Official Commission records indicate that at total of 11,334 individual radio stations were operating in 1992.<sup>82</sup> As of September 30, 2001, Commission records indicate that a total of 13,012 radio stations were operating, of which 8,285 were FM stations.<sup>83</sup> Only commercial stations are subject to regulatory fees.

26. The rules may affect an estimated total of 1,230 television stations, approximately 1,281 of which are considered small businesses.<sup>84</sup> The revised rules will also affect an estimated total of 10,819 radio stations, approximately 12,209 of which are small businesses.<sup>85</sup> These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,256 low power television

Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>76</sup> 13 CFR 121.201, NAICS codes 513111 and 513112.

<sup>77</sup> *1992 Census, Series UC92-S-1, at Appendix A-9.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

<sup>82</sup> FCC News Release, No. 31327 (Jan. 13, 1993).

<sup>83</sup> FCC News Release, "Broadcast Station Totals as of September 30, 2001."

<sup>84</sup> We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than \$10 million and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

<sup>85</sup> We use the 96% figure of radio station establishments with less than \$5 million revenue from data presented in the year 2000 estimate (FCC News Release, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

stations (LPTV).<sup>86</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

27. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.<sup>87</sup>

28. The Commission estimates that there are approximately 3,600 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.<sup>88</sup>

29. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint, one-way video services to subscribers, and Local Multipoint Distribution Service (LMDS).<sup>89</sup> The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.<sup>90</sup> In connection with

<sup>86</sup> FCC News Release, "Broadcast Station Totals as of September 30, 2001."

<sup>87</sup> 13 CFR 121.201, NAICS codes 513111 and 513112.

<sup>88</sup> 15 U.S.C. 632.

<sup>89</sup> For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). See 66 FR 36177.

<sup>90</sup> Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licenses to Engage in

the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.<sup>91</sup> The Commission established this small business definition in the context of this particular service and with the approval of the SBA.<sup>92</sup> The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).<sup>93</sup> Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.<sup>94</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this Notice.

#### *Wireless and Commercial Mobile Services*

30. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.<sup>95</sup> According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178

such firms which operated during 1992 had 1,000 or more employees.<sup>96</sup> Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 Telecommunications Provider Locator, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.<sup>97</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by the proposed rules, if adopted.

31. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.<sup>98</sup> According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>99</sup> If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such

licensees are small businesses under the SBA's definition.

32. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, 62 FR 16004, April 3, 1997, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>100</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>101</sup> The SBA has approved these definitions.<sup>102</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>103</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>104</sup> Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>105</sup>

33. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>106</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15

Fixed Two-Way Transmissions, 13 FCC Rcd 19112 (1998), recon., 14 FCC Rcd 12764 (1999), further recon., 15 FCC Rcd 14566 (2000).

<sup>91</sup> 47 CFR 21.961 and 1.2110.

<sup>92</sup> *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

<sup>93</sup> Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *id.* At 9608.

<sup>94</sup> 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. Section 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less). See 13 CFR 121.201.

<sup>95</sup> 13 CFR 121.201, NAICS code 513322.

<sup>96</sup> 1992 Census, Series UC92-S-1, at Table 5, NAICS code 513322.

<sup>97</sup> *Telecommunications Provider Locator*, Table 1 (November 2001).

<sup>98</sup> 13 CFR 121.201, NAICS code 513322.

<sup>99</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

<sup>100</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paragraphs 291-295 (1997).

<sup>101</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, paragraph 291.

<sup>102</sup> See Letter to D. Python, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>103</sup> See generally Public Notice, "220 MHz Service Auction Closes," Public Notice, 14 FCC Rcd 605 (1998).

<sup>104</sup> Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Public Notice, 14 FCC Rcd 1085 (1999).

<sup>105</sup> "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

<sup>106</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, Second Report and Order, 65 FR 17599 (April 4, 2000).

million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>107</sup> Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>108</sup>

34. *Private and Common Carrier Paging.* In the Paging Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>109</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>110</sup> The SBA has approved these definitions.<sup>111</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>112</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses.

<sup>107</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, October 23, 1998).

<sup>108</sup> "700 MHz Guard Bands Auction Closes," Public Notice, DA 01-478 (rel. February 22, 2001).

<sup>109</sup> 220 MHz Third Report and Order, 62 FR 16004 (April 3, 1997), at paragraphs 291-295.

<sup>110</sup> 700 MHz Guard Band Auction Closes," Public Notice, 15 FCC Rcd 18026 (2000).

<sup>111</sup> "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98-107 (1999).

<sup>112</sup> "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

According to the most recent data in the Telecommunications Provider Locator, 608 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.<sup>113</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition.

Consequently, we estimate that there are fewer than 608 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

35. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>114</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>115</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>116</sup> No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.<sup>117</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. An

<sup>113</sup> See *Telecommunications Provider Locator* at Table 1 (November 2001).

<sup>114</sup> See generally "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (2000).

<sup>115</sup> See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

<sup>116</sup> See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

<sup>117</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

additional classification for "very small business" was added for C Block and is defined as "an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years."<sup>118</sup> The SBA approved this definition.<sup>119</sup> Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

36. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the Narrowband PCS Second Report and Order.<sup>120</sup> A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA.<sup>121</sup> In the future, the Commission will auction 459

<sup>118</sup> See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd 15743 at 15767-68, paragraphs 45-46 (1998).

<sup>119</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

<sup>120</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

<sup>121</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

37. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>122</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>123</sup> We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>124</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

38. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>125</sup> We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>126</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

39. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and

800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years.<sup>127</sup> The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.<sup>128</sup> Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the \$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.<sup>129</sup> Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>130</sup> An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

40. These revised fees in the Report and Order apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

41. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

42. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs<sup>131</sup> indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

43. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

44. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.<sup>132</sup>

45. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We

<sup>122</sup> The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

<sup>123</sup> BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

<sup>124</sup> 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

<sup>125</sup> The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

<sup>126</sup> 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

<sup>127</sup> 47 CFR 90.814(b)(1).

<sup>128</sup> See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

<sup>129</sup> See Letter to Daniel B. Ppython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

<sup>130</sup> *Id.*

<sup>131</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at paragraph 116.

<sup>132</sup> 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

estimate that only 16,800 will be subject to FY 2001 regulatory fees.

#### 46. Fixed Microwave Services.

Microwave services include common carrier,<sup>133</sup> private-operational fixed,<sup>134</sup> and broadcast auxiliary radio services.<sup>135</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons.<sup>136</sup> We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

#### 47. Public Safety Radio Services.

Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>137</sup>

<sup>133</sup> 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

<sup>134</sup> Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>135</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>136</sup> 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

<sup>137</sup> With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The

There are a total of approximately 127,540 licensees within these services. Governmental entities<sup>138</sup> as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>139</sup> All licensees in this category are exempt from the payment of regulatory fees.

48. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).<sup>140</sup> Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

49. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>141</sup> There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

50. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The

1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

<sup>138</sup> 47 CFR 1.1162.

<sup>139</sup> 5 U.S.C. 601(5).

<sup>140</sup> Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

<sup>141</sup> This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001 through 22.1037.

Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.<sup>142</sup> The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

51. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>143</sup> An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>144</sup> These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

52. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>145</sup> An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>146</sup> These regulations defining "small entity" in the context of LMDS auctions have been

<sup>142</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

<sup>143</sup> See In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, Report and Order, 12 FCC Rcd 18600 (1997).

<sup>144</sup> *Id.*

<sup>145</sup> See Local Multipoint Distribution Service, Second Report and Order, 62 FR 23148, April 29, 1997.

<sup>146</sup> *Id.*

approved by the SBA.<sup>147</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

53. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>148</sup> In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.<sup>149</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>150</sup> We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above

discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses if these proposed rules were adopted.

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

54. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.<sup>151</sup> Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside

professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business record.

55. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

56. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.<sup>152</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>153</sup> Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.<sup>154</sup> Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 104–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another federal agency until such obligations are paid.<sup>155</sup>

57. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferral of payment of the regulatory fee.<sup>156</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the

<sup>151</sup> The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

<sup>147</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>148</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

<sup>149</sup> In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (November 3, 1999).

<sup>150</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (1999).

<sup>152</sup> 47 CFR 1.1164.

<sup>153</sup> 47 CFR 1.1164(c).

<sup>154</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>155</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>156</sup> 47 CFR 1.1166.

Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

58. 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: (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. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra*, which gives “Detailed Guidance on Who Must Pay Regulatory Fees.” Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We have sought comment on other alternatives that might simplify our fee

procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

59. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2000*, Public Law 106–553, requires the Commission to revise its Schedule of Regulatory Fees to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2002.<sup>157</sup> As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

60. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

61. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 148, *supra*, and Attachment F of the *Notice of Proposed Rulemaking, infra*.

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

62. None.

**Attachment B—Sources of Payment Unit Estimates for FY 2002**

In order to calculate individual service fees for FY 2002, we adjusted FY 2001 payment units for each service to more accurately reflect expected FY 2002 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2002 estimates with actual FY 2001 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2002 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2002 payment units are based on FY 2001 actual payment units, it does not necessarily mean that our FY 2002 projection is *exactly* the same number as FY 2001. It means that we have either rounded the FY 2002 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, <sup>158</sup> Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services .....	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services .....	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations .....	Based on estimates from Mass Media Bureau estimates.
UHF/VHF Television Stations .....	Based on Mass Media Bureau estimates and actual FY 2001 payment units.
AM/FM/TV Construction Permits .....	Based on Mass Media Bureau estimates and actual FY 2001 payment units.
LPTV, Translators and Boosters .....	Based on actual FY 2001 payment units.
Auxiliaries .....	Based on Wireless Telecommunications Bureau estimates.
MDS/LMDS/MMDS .....	Based on Mass Media Bureau estimates.
Cable Antenna Relay Service (CARS) .....	Based on Cable Services Bureau estimates.
Cable Television System Subscribers .....	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telecommunication Service Providers	Based on actual FY 2001 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2002 revenue growth for industry as estimated by Common Carrier Bureau.
Earth Stations .....	Based on International Bureau estimates.
Space Stations (GSOs & NGSOs) .....	Based on International Bureau licensee data bases.
International Bearer Circuits .....	Based on International Bureau estimates.

<sup>157</sup> 47 U.S.C. 159(a).

Fee category	Sources of payment unit estimates
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

<sup>158</sup> The Wireless Telecommunications Bureau's staff advises that they anticipate receiving only 25 applications for 218–219 MHz (formerly IVDS) in FY 2001.

**Attachment Calculation of FY 2002 Revenue Requirements and Pro-Rata FEES Attachment C**

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement**	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected FY 2002 revenue
PLMRS (Exclusive Use) .....	4,100	10	275,000	300,575	7	5	205,000
PLMRS (Shared use) .....	43,500	10	2,900,000	3,169,700	7	5	2,175,000
Microwave .....	11,500	10	1,195,000	1,306,135	11	10	1,150,000
218–219 MHz (Formerly IVDS) .....	5	10	1,250	1,366	27	25	1,250
Marine (Ship) .....	5,200	10	550,000	601,150	12	10	520,000
GMRS .....	3,180	5	50,000	54,650	3	5	79,500
Aviation (Aircraft) .....	2,700	10	175,000	191,275	7	5	135,000
Marine (Coast) .....	900	10	65,000	71,045	8	10	90,000
Aviation (Ground) .....	2,000	5	85,000	92,905	9	10	100,000
Amateur Vanity Call Signs ...	9,000	10	120,000	131,160	1.46	1.45	130,500
AM Class A .....	76	1	146,300	159,906	2,104	2,100	159,600
AM Class B .....	1,672	1	1,806,300	1,974,286	1,181	1,175	1,964,600
AM Class C .....	990	1	618,760	676,305	683	685	678,150
AM Class D .....	1,933	1	2,033,850	2,222,998	1,150	1,150	2,222,950
FM Classes A, B1 & C3 .....	3,192	1	4,160,000	4,546,880	1,424	1,425	4,548,600
FM Classes B, C, C1 & C2 .....	2,956	1	5,166,300	5,646,766	1,910	1,900	5,616,400
AM Construction Permits .....	48	1	16,240	17,750	370	370	17,760
FM Construction Permits .....	202	1	277,500	303,308	1,502	1,500	303,000
Satellite TV .....	128	1	93,980	102,720	803	805	103,040
Satellite TV Construction Permit .....	5	1	1,920	2,099	420	420	2,100
VHF Markets 1–10 .....	44	1	1,894,200	2,070,361	47,054	47,050	2,070,200
VHF Markets 11–25 .....	61	1	1,936,675	2,116,786	34,701	34,700	2,116,700
VHF Markets 26–50 .....	76	1	1,642,025	1,794,733	23,615	23,625	1,795,500
VHF Markets 51–100 .....	114	1	1,581,250	1,728,306	15,161	15,150	1,727,100
VHF Remaining Markets .....	215	1	691,025	755,290	3,513	3,525	757,875
VHF Construction Permits ...	22	1	55,350	60,498	2,750	2,750	60,500
UHF Markets 1–10 .....	97	1	1,136,250	1,241,921	12,803	12,800	1,241,600
UHF Markets 11–25 .....	98	1	922,500	1,008,293	10,289	10,300	1,009,400
UHF Markets 26–50 .....	129	1	778,250	850,627	6,594	6,600	851,400
UHF Markets 51–100 .....	190	1	672,375	734,906	3,868	3,875	736,250
UHF Remaining Markets .....	206	1	201,250	219,966	1,068	1,075	221,450
UHF Construction Permits ...	59	1	280,000	306,040	5,187	5,175	305,325
Auxiliaries .....	24,000	1	270,000	295,110	12	10	240,000
International HF Broadcast ..	6	1	2,720	2,973	495	495	2,970
LPTV/Translators/Boosters ..	2,800	1	823,500	900,086	321	320	896,000
CARS .....	1,600	1	93,500	102,196	64	65	104,000
Cable Systems .....	68,980,000	1	33,431,844	36,541,005	0.53	0.53	36,541,005
Interstate Telecommunication Service Providers ..	66,544,000,000	1	93,387,376	102,072,402	0.00153	0.00153	102,072,402
CMRS Mobile Services (Cellular/Public Mobile) .....	125,000,000	1	27,404,520	29,953,140	0.24	0.24	29,953,140
CMRS Messaging Services .....	23,600,000	1	1,625,054	1,776,184	0.08	0.08	1,776,184
MDS/MMDS/LMDS .....	2,300	1	900,000	983,700	428	430	989,000
International Bearer Circuits .....	2,830,000	1	4,202,255	4,593,065	1.62	2	5,660,000
International Public Fixed ....	1	1	1,275	1,394	1,394	1,400	1,400
Earth Stations .....	3,873	1	501,120	547,724	141	140	542,220
Space Stations (Geostationary) .....	71	1	6,476,250	7,078,541	99,698	99,700	7,078,700
Space Stations (Non-geostationary) .....	5	1	566,550	619,239	123,848	123,850	619,250
Total Estimated Revenue to be Collected .....			201,214,514	219,927,464			219,572,022
Total Revenue Requirement .....				218,757,000			218,757,000

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement**	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected FY 2002 revenue
Difference .....				1,170,464			815,022

\*\* 1.093 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 107-77 and 47 U.S.C. 159(a)(2)).

**Attachment D—FY 2002 Schedule of Regulatory Fees (Proposed)**

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	5
Microwave (per license) (47 CFR part 101) .....	10
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	25
Marine (Ship) (per station) (47 CFR part 80) .....	10
Marine (Coast) (per license) (47 CFR part 80) .....	10
General Mobile Radio Service (per license) (47 CFR part 95) .....	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) .....	5
PLMRS (Shared Use) (per license) (47 CFR part 90) .....	5
Aviation (Aircraft) (per station) (47 CFR part 87) .....	5
Aviation (Ground) (per license) (47 CFR part 87) .....	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	1.45
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.24
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Multipoint Distribution Services (MMDS, LMDS & MDS) (per call sign) (47 CFR part 21) .....	430
AM Radio Construction Permits .....	370
FM Radio Construction Permits .....	1,500
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	47,050
Markets 11–25 .....	34,700
Markets 26–50 .....	23,625
Markets 51–100 .....	15,150
Remaining Markets .....	3,525
Construction Permits .....	2,750
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	12,800
Markets 11–25 .....	10,300
Markets 26–50 .....	6,600
Markets 51–100 .....	3,875
Remaining Markets .....	1,075
Construction Permits .....	5,175
Satellite Television Stations (All Markets) .....	805
Construction Permits—Satellite Television Stations .....	420
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) .....	320
Broadcast Auxiliary (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	65
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.53
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00153
Earth Stations (47 CFR part 25) .....	140
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100) .....	99,700
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	123,850
International Bearer Circuits (per active 64KB circuit) .....	2
International Public Fixed (per call sign) (47 CFR part 23) .....	1,400
International (HF) Broadcast (47 CFR part 73) .....	495

**RADIO STATION REGULATORY FEES**

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000 .....	500	375	275	325	375	500
20,001–50,000 .....	925	725	375	525	725	925
50,001–125,000 .....	1,500	975	525	775	975	1,500
125,001–400,000 .....	2,250	1,575	800	950	1,575	2,250
400,001–1,000,000 .....	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000 .....	4,975	4,100	2,075	2,625	4,100	4,975

Attachment E—Comparison Between FY 2001 & FY 2002 Proposed Regulatory Fees

Fee category	Annual regulatory fee FY 2001	NPRM proposed fee FY 2002	Annual regulatory fee FY 2002
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	5	5	
Microwave (per license) (47 CFR part 101)	5	10	
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	10	25	
Marine (Ship) (per station) (47 CFR part 80)	10	10	
Marine (Coast) (per license) (47 CFR part 80)	5	10	
General Mobile Radio Service (per license) (47 CFR part 95)	5	5	
Rural Radio (47 CFR part 22) (previously listed under Land Mobile)	5	5	
PLMRS (Shared Use) (47 CFR part 90)	5	5	
Aviation (Aircraft) (per station) (47 CFR part 87)	5	5	
Aviation (Ground) (per license) (47 CFR part 87)	10	10	
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.20	1.45	
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.27	.24	
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.05	.08	
Multipoint Distribution Services (Includes MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	450	430	
AM Construction Permits	280	370	
FM Construction Permits	925	1,500	
TV (47 CFR part 73) VHF Commercial:			
Markets 1–10	45,100	47,050	
Markets 11–25	32,825	34,700	
Markets 26–50	21,325	23,625	
Markets 51–100	13,750	15,150	
Remaining Markets	3,275	3,525	
Construction Permits	3,075	2,750	
TV (47 CFR part 73) UHF Commercial:			
Markets 1–10	15,150	12,800	
Markets 11–25	12,300	10,300	
Markets 26–50	7,075	6,600	
Markets 51–100	4,075	3,875	
Remaining Markets	1,150	1,075	
Construction Permits	4,000	5,175	
Satellite Television Stations (All Markets)	740	805	
Construction Permits—Satellite Television Stations	480	420	
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	305	320	
Broadcast Auxiliary (47 CFR part 74)	10	10	
CARS (47 CFR part 78)	55	65	
Earth Stations (47 CFR part 25)	180	140	
Cable Television Systems (per subscriber) (47 CFR part 76)	.49	.53	
Interstate Telecommunication Service Providers (per revenue dollar)	.00132	.00153	
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	98,125	99,700	
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	94,425	123,850	
International Bearer Circuits (per active 64KB circuit)	5	2	
International Public Fixed (per call sign) (47 CFR part 23)	1,275	1,400	
International (HF) Broadcast (47 CFR part 73)	680	495	

FY 2001 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	450	350	250	300	350	450
20,001–50,000	850	675	350	475	675	850
50,001–125,000	1,375	900	475	700	900	1,375
125,001–400,000	2,050	1,450	725	875	1,450	2,050
400,001–1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

FY 2002 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001–50,000	925	725	375	525	725	925

## FY 2002 RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
50,001—125,000 .....	1,500	975	525	775	975	1,500
125,001—400,000 .....	2,250	1,575	800	950	1,575	2,250
400,001—1,000,000 .....	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000 .....	4,975	4,100	2,075	2,625	4,100	4,975

**Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees**

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,<sup>159</sup> as modified in the instant *NPRM*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 through 2001, and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.<sup>160</sup>

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

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

<sup>160</sup> 47 U.S.C. 159(b)(2), (3).

*1. Private Wireless Radio Services*

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.<sup>161</sup> In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

## a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).<sup>162</sup> For FY 2002, PLMRS licensees will pay a \$5 annual regulatory fee per license, payable for an entire ten-year license term at the time

<sup>161</sup> 47 U.S.C. 159(b)(1)(A).

<sup>162</sup> This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

of application for a new, renewal, or reinstatement license.<sup>163</sup> The total regulatory fee due is \$50 for the ten-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2002, Microwave licensees will pay a \$10 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$100 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private carrier basis. The Commission anticipated receiving 25 applications in the 218–219 MHz service during FY 2001. For FY 2002, we anticipate receiving five applications and propose that the annual regulatory fee for 218–219 MHz licensees be set at \$25 per application. The total regulatory fee due would be \$250 for the ten-year license term.

## b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between

<sup>163</sup> Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2002, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a \$10 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$100 for the ten-year license term.

8. *Marine (Coast) Service*: This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2002, licensees of Marine (Coast) Stations will pay a \$10 annual regulatory fee per call sign, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$100 per call sign for the ten-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use)*: These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2002, licensees of services in this category will pay a \$5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$50 for the ten-year license term.

10. *Aviation (Aircraft) Service*: These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the

Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The Commission exercises that authority. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2002, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a \$5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$50 per station for the ten-year license term.

11. *Aviation (Ground) Service*: This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2002, licensees of Aviation (Ground) Stations will pay a \$10 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is \$50 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS)*: These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2002, GMRS licensees will pay a \$5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$25 per license for the five-year license term.

#### c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs*: This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a \$1.20 annual regulatory fee per call sign, as prescribed in the FY 2001 fee schedule, payable for an entire ten-year license term at the time of application for a

vanity call sign until the FY 2002 fee schedule becomes effective. The total regulatory fee due would be \$12 per license for the ten-year license term.<sup>164</sup> For FY 2002, Amateur Vanity Call Sign applicants will pay a \$1.45 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$14.50 per call sign for the ten-year license term.

#### d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services*: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);<sup>165</sup> Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is \$.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services*: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing

<sup>164</sup> Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

<sup>165</sup> This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (*e.g.*, one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, this category includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is \$.08 per unit.

16. Finally, with regard to our definition of a CMRS payment units, we

clarify that fees are assessable on each CMRS subscriber considered “active” as of December 31, 2001. Examples of CMRS subscribers include: subscribers of terrestrial mobile telephone services, subscribers of one-way or two-way paging services, and subscribers of other wireless messaging services that are capable of transmitting and/or receiving data communications. A “feeable” CMRS payment unit is a CMRS subscriber that has possession of a mobile device that can transmit or receive voice or non-voice communications, or a CMRS subscriber has a contractual agreement for the provision of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and obtains a paging services contract from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Further, if John Doe purchases a pager and obtains paging services from a paging reseller which resells services from Paging Licensee X, Paging Licensee X is still responsible for paying the applicable regulatory fee for this CMRS payment unit.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission’s Rules.<sup>166</sup> We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2002 are as follows:

FY 2002 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000 .....	500	375	275	325	375	500
20,001—50,000 .....	925	725	375	525	725	925
50,001—125,000 .....	1,500	975	525	775	975	1,500
125,001—400,000 .....	2,250	1,575	800	950	1,575	2,250
400,001—1,000,000 .....	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000 .....	4,975	4,100	2,075	2,625	4,100	4,975

19. Licensees may determine the appropriate fee payment by referring to the FCC’s internet world wide web site (<http://www.fcc.gov>) or by calling the FCC’s National Call Center (1–888–225–5322). The same information may be included in the Public Notices mailed to each licensee for which we have a current address on file (Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment).

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct *new* Commercial AM Stations. For FY 2002, a regulatee

who held a construction permit on October 1, 2001 will pay a fee of \$370 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct *new* Commercial FM Stations. For FY 2002, a regulatee

who held a construction permit on October 1, 2001 will pay a fee of \$1,500 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission’s Rules, except commonly

<sup>166</sup> The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than

would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased

interference protection associated with the higher station class is necessary and justifies the fee.

owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 70, 2002 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10: \$47,050  
 VHF Markets 11–25: 34,700  
 VHF Markets 26–50: 23,625  
 VHF Markets 51–100: 15,150  
 VHF Remaining Markets: 3,525  
 UHF Markets 1–10: \$12,800  
 UHF Markets 11–25: 10,300  
 UHF Markets 26–50: 6,600  
 UHF Markets 51–100: 3,875  
 UHF Remaining Markets: 1,075

#### e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of \$805 annually. Those stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

#### f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct *new* Commercial VHF Television Stations authorized as of October 1, 2001. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of \$2,750 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the television station appears.

#### g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct *new* UHF Television Stations authorized as of October 1, 2001. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of \$5,175 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a

construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the television station appears.

#### h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2002 is \$420. A regulatee who held a construction permit on October 1, 2001 will pay a fee of \$420 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

#### i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, non-profitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators that meet certain requirements will have their fees waived.<sup>167</sup> For FY 2002, licensees in low power television, FM translator and booster, and TV translator and booster

category will pay a regulatory fee of \$320 for each license held.

#### j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2002, licensees of Commercial Auxiliary Stations will pay an \$10 annual regulatory fee on a per call sign basis.

#### k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2002, MDS and MMDS stations will pay an annual regulatory fee of \$430 per call sign.

### 3. Cable Services

#### a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2002, Cable Systems will pay a regulatory fee of \$.53 per subscriber.<sup>168</sup> Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 2001. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. *See* FY 1994

<sup>168</sup> Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. *See* FY 1994 *Report and Order* at paragraph 100.

<sup>167</sup> *See* 10 FCC Rcd 12759, 12762 (1995).

Report and Order, Appendix B at paragraph 31.<sup>169</sup>

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2002, licensees will pay an annual regulatory fee of \$65 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *supra*).

b. Interstate Telecommunication Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as "interstate telecommunication service providers".

34. Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), interexchange carriers (long distance telephone companies), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, prepaid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

35. To avoid imposing a double payment burden on resellers, we base the regulatory fee on end-user revenues. Interstate telecommunication service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.<sup>170</sup> Interstate telecommunication service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2002, carriers must multiply their interstate and international revenue from subject local and toll services by the factor 0.00153 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

Calendar 2001 revenue information		(Show amounts in whole dollars)
1	Service provided by U.S. carriers that both originates and terminates in foreign points. FCC Form 499-A Line 412 (e) .....	.....
2	Interstate end-user revenues from all telecommunications services. FCC Form 499-A Line 420 (d) .....	.....
3	International end-user revenues from all telecommunications services except international-to-international. FCC Form 499-A Line 420 (e) .....	.....
4	Total end-user revenues (Sum of Lines 1, 2 and 3) Note: also enter this number on Block (28A)—"FCC Code 1". .....	.....
5	End-user interstate mobile service monthly and activation charges. FCC Form 499-A Line 409 (d) .....	.....
6	End-user international mobile service monthly and activation charges. FCC Form 499-A Line 409 (e) .....	.....
7	End-user interstate mobile service message charges including roaming charges but excluding toll charges. FCC Form 499-A Line 410 (d) .....	.....
8	End-user international mobile service message charges including roaming charges but excluding toll charges. FCC Form 499-A Line 410 (e) .....	.....
9	End-user interstate satellite services. FCC Form 499-A Line 416 (d) .....	.....
10	End-user international satellite services. FCC Form 499-A Line 416 (e) .....	.....
11	Surcharges on mobile and satellite services identified as recovering universal service contributions and included in Line 403 (d) or 403 (e) on your FCC Form 499. [Note: you may not include surcharges applied to local or toll services, nor any surcharges identified as intrastate surcharges.] .....	.....
12	Interstate and international revenues from resellers that do not contribute to USF. FCC Form 499-A Line 511 (b) .....	.....
13	Total excluded end-user revenues. (Sum Lines 5 through 12.) Note: also enter this number on Block (29A)—"FCC Code 2". .....	.....
14	Total subject revenues. (Line 4 minus Line 13) Note: also enter this number in Block (25A)—"Quantity". .....	.....
15	Interstate telecommunications service provider fee factor .....	.00153
16	2002 Regulatory Fee (Line 14 times Line 15)* Note: also enter this number in Block (27A)—"Total Fee" .....	.....

\*You are exempt from filing if the amount on line 16 is less than \$10.

<sup>169</sup> 59 FR 30984 (June 16, 1994).  
<sup>170</sup> See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements

Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support

Mechanisms, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (Contributor Reporting Requirements Order).

5. International Services

a. Earth Stations

36. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.<sup>171</sup> *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 2002, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite, Transmit/Receive and Transmit-Only Earth Stations will pay a fee of \$140 per authorization or registration *as well as a separate fee of \$140 for each associated Hub Station*.

37. *Receive-only earth stations*. For FY 2002, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

38. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or

re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2002, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of \$99,700 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

39. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 2002, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of \$123,850 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order*<sup>172</sup> at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because § 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we previously clarified our definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

40. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the

circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. See FY 1994 *Report and Order* at 5367<sup>173</sup>. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps (or E-1) circuit is 30 64 Kbps circuits; a 155 Mbps (or STM-1) circuit is 1,890 64 Kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, any derived circuits (circuits derived from 64 Kbps bearer circuits by the use of digital circuit multiplication systems) are not equivalent 64 kbps bearer circuits. Such derived circuits are not subject to payment of a fee. Only the 64 Kbps bearer circuit from which they have been derived will be subject to payment of a fee. Resold circuits are not subject to payment of a fee. For FY 2002, the regulatory fee is \$2 for each active 64 Kbps bearer circuit or equivalent. For television channels, we assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36 .....	630
24 .....	288
18 .....	240

e. International Public Fixed

41. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth

<sup>171</sup> Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2001.

<sup>172</sup> 62 FR 37408 (July 11, 1997)

<sup>173</sup> 59FR 30984 (June 16, 1994).

stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2002, International Public Fixed Radio Service licensees will pay a \$1,400 annual regulatory fee per call sign.

f. International (HF) Broadcast

42. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2002, International HF Broadcast Stations will pay an annual regulatory fee of \$495 per station license.

**Attachment G—Description of FCC Activities**

*Licensing:* This activity includes the authorization or licensing of radio stations, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with licensing activities.

*Competition:* This activity includes formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with activities to promote competition.

*Enforcement:* This activity includes enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support

services associated with enforcement activities.

*Consumer Information Services:* This activity includes the publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with consumer information activities.

*Spectrum Management:* This activity includes management of the electromagnetic spectrum as mandated by the Communications Act of 1934, as amended. Spectrum management includes the structure and processes for allocating, allotting, assigning, and licensing this scarce resource to the private sector and state and local governments in a way that promotes competition while ensuring that the public interest is best served. In order to manage spectrum in both an efficient and equitable manner, the Commission prepares economic, technical and engineering studies, coordinates with federal agencies, and represents U.S. industry in international forums. This activity includes direct organizational FTEs and FTE workyear efforts provided by staff offices that support policy direction, program development, legal services, and executive direction, as well as support services associated with spectrum management activities.

**Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages**

*AM Stations*

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.<sup>174</sup> Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a

database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

*FM Stations*

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.<sup>175</sup> The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

[FR Doc. 02-8600 Filed 4-9-02; 8:45 am]

BILLING CODE 6712-02-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 020325067-2067-01; I.D. 080901B]

RIN 0648-AP49

**Atlantic Highly Migratory Species; Pelagic Longline Fishery; Shark Gillnet Fishery; Sea Turtle and Whale Protection Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

<sup>174</sup> 47 CFR 73.150 and 73.152.

<sup>175</sup> 47 CFR 73.313.