

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 1****[MD Docket No. 04–73; FCC 04–146]****Assessment and Collection of  
Regulatory Fees for Fiscal Year 2004****AGENCY:** Federal Communications  
Commission.**ACTION:** Final rule.

**SUMMARY:** The Commission will 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 2004. 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 9(b)(3), respectively, for annual “Mandatory Adjustments” and “Permitted Amendments” to the Schedule of Regulatory Fees.

**DATES:** Effective August 6, 2004.

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**SUPPLEMENTARY INFORMATION:** *Adopted:* June 21, 2004.

*Released:* June 24, 2004.

By the Commission: Commissioner Copps, concurring and issuing a statement; Commissioner Adelstein approving in part, concurring in part, and issuing statement.

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**I. Introduction**

1. In this *Report and Order* (“R&O”), we conclude a proceeding to collect \$272,958,000 in regulatory fees for Fiscal Year (FY) 2004. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities.<sup>1</sup>

**II. Discussion****A. Development of FY2004 Fees****1. Calculation of Revenue and Fee Requirements**

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).<sup>2</sup> For

<sup>2</sup> It is important to note that the required increase in regulatory fee payments of approximately 1.5 percent in FY 2004 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 1.5 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

FY2004, this allocation was done using FY2003 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 1.5 percent to reflect the increase in regulatory fees from FY2003 to FY2004. These FY2004 amounts were then divided by the number of payment units in each fee category to determine the unit fee.<sup>3</sup> In instances of small fees, such as licenses that are renewed over a

<sup>3</sup> In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

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

multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

## 2. Additional Adjustments to Payment Units

3. In calculating the FY2004 regulatory fees proposed in Attachment D, we further adjusted the FY2003 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.<sup>4</sup> Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY2004, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, for example, when we note that our estimated FY2004 payment units are based on FY2003 actual payment units, we may have rounded that number for FY2004 or adjusted it slightly to account for these variables.

4. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

## 3. Relationship of Regulatory Fees to Costs

5. A number of parties challenge the proposed regulatory fees by claiming

that the fees are not appropriately based on the Commission's regulatory costs.<sup>5</sup> They argue, in particular, that the proposed fee for their particular service does not properly reflect the costs for the level of Commission regulatory activity attributable to that service.<sup>6</sup> For example, they maintain that reduced regulatory oversight of their services should result in reduced fees. Further, CTIA and Tyco claim that the proposed fees for CMRS and international bearer circuits, respectively, are improper because, *inter alia*, the Commission has failed to develop a cost accounting system as required by section 9(i) of the Act.<sup>7</sup> Verizon, however, disagrees with these contentions, and points out that section 9 does not require the Commission to set fees that are proportional to regulatory burdens on a service by service basis.<sup>8</sup> Verizon asserts that this would be an "unworkable task" for the Commission.<sup>9</sup> Verizon further maintains that imposing increased fees on those payers who face increased regulation would amount to a double penalty for those carriers.<sup>10</sup>

6. As we have in the past, we again reject arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.<sup>11</sup> We find that parties maintaining that reduced Commission regulatory activity in connection with any service should equate to a reduction in regulatory fees for that service have misconstrued the requirements of section 9.

7. Pursuant to section 9(a) the Act, 47 U.S.C. 159(a), the Commission is authorized to collect regulatory fees "to recover the costs of \* \* \* enforcement activities, policy and rulemaking activities, user information services, and international activities." Fees are to be

derived by determining the full-time equivalent number of employees performing the activities described, "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities \* \* \*" 47 U.S.C. 159(b)(1)(A). This provision authorizes the Commission to take into account overall staff costs in implementing its continuing obligation to ensure that the fee schedule is consistent with section 9(b)(1)(a), and it also makes clear that the Commission is free to depart from strictly cost-based fees.

8. In this regard, the initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects the "costs adjusted for benefits" approach permitted under section 9. For example, Congress required that satellite fees be based on the number of satellites the regulatee has in operation; however, the number of satellites may or may not relate to the actual costs in terms of FTEs of regulating that particular entity. Similarly, the statutory fee schedule generally reflects higher fees for types of regulatees that are authorized to use larger amounts of, or more desirable, spectrum, or that are larger and have more customers. For example, in the statute radio and television fees are based on the size of the markets served and carriers' fees are based on the numbers of subscribers or access lines.

9. Moreover, adjustments to the Fee Schedule authorized by section 9 do not, in every instance, implicate costs. Mandatory adjustments to the congressionally enacted Fee Schedule, as set forth in section 9(b)(2), are "proportionate increases or decreases" to reflect the specific amount required to be collected each year in appropriations Acts, as well as fee adjustments to reflect "unexpected increases or decreases in the numbers of licensees or units subject to payment" of regulatory fees. Section 9(b)(3), "Permitted amendments", requires the Commission to add, delete or reclassify services in the fee schedule to reflect additions, deletions or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law." Section 9(b)(3) also requires the Commission to amend, by rule, the Fee Schedule "if the Commission determines that the schedule requires amendment to comply with the requirements" of section 9(b)(1)(A), cited above.<sup>12</sup> Neither of these provisions requires amendment

<sup>4</sup> The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. For additional information on source material, see Attachment B.

<sup>5</sup> See e.g., CTIA Comments at n. 4; Globalstar Comments at 3-7; Tyco Comments at 11-13; XO Communications Comments at 2-3; ORBCOMM Replies at 2-3; RTG Replies at 5-6; Space Imaging Replies at 3-4.

<sup>6</sup> See e.g., Space Imaging Replies at 3-4; Globalstar Comments at 3; FLAG Replies at 3; ORBCOMM Replies at 2-3.

<sup>7</sup> See CTIA Comments at n. 4; Tyco Comments at 5. See also 47 U.S.C. 159(i).

<sup>8</sup> Verizon Comments at 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> The Commission has consistently interpreted the requirements of Section 9 in this manner. See e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17171-2 (1997) (1997 Regulatory Fee Report and Order); *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd. 13512, 13524 (1995) (1995 Regulatory Fee Report and Order); *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, Report and Order, MD Docket No. 98-36, FCC 98-115, 1998 WL 320272, para. 15 (1998) (1998 Regulatory Fee Report and Order).

<sup>12</sup> See 47 U.S.C. 159(b)(3).

of the fee schedule to mirror all changes in regulatory costs.

10. We note further that attempting to adjust fees to mirror exactly the costs of each particular service would be unworkable. The fee process specified by section 9 is by necessity a “zero-sum” proposition, since the reduction of fees in one category must be counterbalanced by increases in other categories to ensure that the total amount specified by Congress is collected. These increases would, of course, not necessarily reflect any increase in the costs related to the other services.

11. More generally, section 9 fees are designed to recover the amount that Congress has required us to collect, and include the full amount of specified regulatory costs from regulatees as well as costs not directly related to those entities subject to fees. Regulatory fees recover: (a) Direct costs, such as salary and expenses; (b) indirect costs, such as overhead functions; and (c) support costs, such as rent, utilities, or equipment, to name a few. Regulatory fees also recover costs attributable to regulatees that Congress has exempted from the fees as well as costs attributable to licensees granted fee waivers. Regulatory fees take into account as well factors reasonably related to the benefits provided to the payer of the fee by the Commission. We find that Congress intended that the “benefits” to be recovered through fees were not limited strictly to the benefits derived from the Commission regulation of a specific service, or lack thereof, as parties argue. Rather, section 9(b)(1)(A) cites benefits such as service area coverage, shared use versus exclusive use, and “other factors that the Commission determines are necessary in the public interest.”<sup>13</sup> Thus, there is no statutory requirement to tie each fee to the specific costs associated with each service.

12. CTIA and Tyco also object to the proposed fees based on the Commission’s failure to develop a cost accounting system.<sup>14</sup> The accounting system requirement set forth in section 9(i) applies when “necessary” to making the limited category of adjustments authorized by section (b)(3), “Permitted amendments”. Permitted amendments must be consistent with the “costs adjusted for benefits” approach set out in section 9(b)(1)(A). The Commission has FTE data on a macro-service level by fee activity as required by section 9(b)(1)(A). We find that this cost data,

modified by the appropriate “benefits” analysis, results in a regulatory fee schedule that comports with the requirements of section 9, including section 9(i). The Commission has, in the past, attempted to devise and implement a cost accounting system to be used in connection with regulatory fees. In 1997, the Commission developed a cost accounting system that was based on staff reporting of the numbers of hours spent in various activities for each pay period.<sup>15</sup> Reliance on these reports proved problematic.<sup>16</sup> In FY 1999, the Commission discontinued attempts to base the schedule on the available cost data.<sup>17</sup> In later explaining the decision to abandon the cost-based methodology, the Commission stated that it “found that developing a regulatory fee structure based on available but insufficiently detailed 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 could not be adjusted to an acceptable and balanced level.”<sup>18</sup> Nevertheless, we find that the macro-level FTE data available is sufficient to inform the cost basis portion of our regulatory fees. We therefore reject CTIA’s and Tyco’s arguments. And, as noted above, the Commission is authorized to make permitted amendments to bring the Fee Schedule into compliance with section 9(b)(1)(A), a provision that clearly permits the Commission to depart from strictly cost-based fees. Going forward, we will continue to use Permitted amendments to amend the fee schedule, as appropriate, where our cost data or benefits analysis, or both, require us to

<sup>15</sup> See 1997 Regulatory Fee Report and Order, 12 FCC Rcd. at 17165–70; *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96–186, FCC 97–49, *Notice of Proposed Rulemaking*, 1997 WL 90978, paras. 9, 15–16 (adopted Feb. 17, 1997; released Mar. 5, 1997) (1997 Regulatory Fee NPRM).

<sup>16</sup> In the FY 1997 proceeding, the Commission determined that some fee categories, especially those for small regulatees, received disproportionately high cost allocations. The Commission adjusted for these high cost allocations by redistributing the costs among fee categories, and established a 25 percent limit on the amount by which fee categories could be increased. See 1997 Regulatory Fee Report and Order at 17175–77. For FY 1998, the Commission continued to rely on cost accounting data to identify its regulatory costs and to develop fees based on these costs, and retained the 25 percent limit on the amount by which fee categories could be increased. See 1998 Regulatory Fee Report and Order, at para. 8.

<sup>17</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report and Order*, 14 FCC Rcd. 9868 (1999) (1999 Regulatory Fee Report and Order).

<sup>18</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd 13203, 13206 (2002).

do so to comply with the requirements of section 9(b)(1)(A).

#### B. Local Multipoint Distribution Service (LMDS)

13. In the FY2003 NPRM,<sup>19</sup> we sought comment on the appropriate fee classification of the Local Multipoint Distribution Service (LMDS).<sup>20</sup> Some commenters urged that LMDS be classified in the microwave fee category. We declined to do so because technological developments and emerging commercial applications suggested that usage of LMDS could evolve differently than services in the microwave fee category.<sup>21</sup> We recognized, however, that “substantive distinctions exist between MDS and LMDS, and that they should not be placed in the same fee category.”<sup>22</sup> Therefore, we created a separate LMDS fee category and stated that we would “initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services.” In the FY2004 NPRM, we again sought comment on the appropriate fee classification for LMDS. We received comments from XO Communications, Inc. (“XO”), and reply comments from Rural Telecommunications Group, Inc. (“RTG”).

14. XO makes two primary arguments and one alternative request. First, it claims that the proposed regulatory fees imposed on LMDS are disproportionate to the costs associated with regulating the service and that they are too high in relationship to the FCC’s administrative burden in overseeing LMDS service.<sup>23</sup> As we explained, *supra* at Section II.A.3., we reject arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission’s regulatory activities for that service.

15. Second, XO argues that we should, for purposes of establishing

<sup>19</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 18 FCC Rcd 6088–89 paragraphs 6–9 (2003) (FY 2003 NPRM).

<sup>20</sup> In both 2001 and 2002, we denied requests to move LMDS from the Multipoint Distribution Service (MDS) fee category to the microwave fee category. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Report and Order*, 16 FCC Rcd 13525 (2001); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Memorandum Opinion and Order*, 17 FCC Rcd 24920 (2002) (FY 2001 Memorandum Opinion and Order).

<sup>21</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15988 paragraph 9 (2003) (FY 2003 Report and Order).

<sup>22</sup> *Id.* Although we separated MDS and LMDS into separate fee categories, we set the regulatory fee amounts for both services at \$265 per license.

<sup>23</sup> XO Comments at 2–3.

<sup>13</sup> See 47 U.S.C. 159(b)(1)(A).

<sup>14</sup> CTIA Comments at footnote 4; Tyco Comments at 5.

regulatory fees, group like services under the same classification or impose similar regulatory fees.<sup>24</sup> Specifically, it proposes that we classify LMDS as a microwave service, to which the proposed \$50 per license per year fee applies, rather than subjecting LMDS licensees to the proposed \$270 per license per year fee applicable to the Multipoint Distribution Service ("MDS").<sup>25</sup> XO states that, contrary to the assertions in the *FY2003 Report and Order*, LMDS is not different than other microwave services and that it is operationally, functionally, and legally similar to the 24 and 39 GHz services.<sup>26</sup> The upperband services, according to XO, are also competitive substitutes for one another and can be used to "complement" one another.<sup>27</sup> In the alternative, XO requests that if we retain a separate fee category for LMDS, we should strive to create regulatory parity and competitive neutrality in our regulations by imposing the same regulatory fees as are imposed on other microwave licensees.<sup>28</sup> RTG, in its reply comments, supports XO's contentions and adds that by assessing the same fee on the LMDS and MDS categories, the Commission effectively requires LMDS licensees to pay regulatory fees more than five times those of other upperband services.<sup>29</sup> RTG also notes that because many LMDS licensees are small and rural companies that utilize this spectrum for point-to-point links and for CMRS backhaul, the assessment of higher annual regulatory fees (when compared to similar services) will unduly harm such licensees.<sup>30</sup>

16. We find no basis for changing our proposed fee schedule to reduce the annual LMDS fee by more than 80 percent, thereby requiring a proportional increase in the fees for all other fee payors. First, as a matter of statutory interpretation, section 9 does not require that competitive services be assessed comparable regulatory fees. Second, LMDS licenses are, as a factual matter, quite different than other Part 101 fixed microwave services in the upper frequency bands (above 15 GHz), except for those in the 24 and 39 GHz bands that will be or have been

auctioned.<sup>31</sup> While these three services are licensed on a geographic basis allowing licensees to place multiple stations within the authorized service areas, most microwave stations are currently licensed on a site-by-site basis thereby requiring, depending on the frequency band, multiple individual licenses to serve a particular geographic area or multiple points therein. Third, even when the fees for LMDS licensees are compared with the fees for licensees in the 24 and 39 GHz bands, we do not find that the current assessments result in disproportionate burdens for LMDS licensees. LMDS Block A licensees are authorized for 1150 MHz of spectrum, more than 10 times the amount of spectrum authorized with an individual 24 and 39 GHz license. Using the authorized bandwidth for each license as a proxy, we note that the LMDS fee for Block A licenses is actually lower on a per megahertz basis than 24 and 39 GHz licenses under both the FY2003 and proposed FY2004 fee schedules. We note that under this method of analysis, LMDS Block B licenses, authorized for 150 MHz in the 31,000–31,075/31,225–31,300, pay \$1.85 per MHz under the proposed schedule. We will address this anomaly in our next year's regulatory fee proceeding. Accordingly, we are maintaining the current fee categories and assessing the proposed amounts for the current fiscal year.

#### C. Commercial Mobile Radio Service (CMRS) Messaging and Cellular/Mobile Service Providers

17. In the *FY2004 NPRM*, we proposed to maintain the CMRS Messaging subscriber regulatory fee rate at the FY 2003 level to avoid further contributing to the financial hardships

associated with a declining subscriber base. We received no comments or reply comments on this matter. Consequently, we will maintain the CMRS messaging regulatory fee rate in FY2004 at \$0.08 per subscriber, the same level as in FY2003.

18. The Rural Cellular Association ("RCA") filed comments addressing the proposed rate of \$0.26 per unit subscriber fee for CMRS Cellular/Mobile service providers. RCA contends that the proposed per unit fee is the same as in FY2003, despite a 6.5 percent increase in CMRS cellular and mobile units from 141.8 million to 151.0 million.<sup>32</sup> RCA maintains that although the congressional revenue requirement has increased by 1.5 percent, the per unit subscriber fee should go down because the number of CMRS units has grown. In its reply comments, Verizon Wireless agrees with RCA and proposes a reduction in the proposed fee to \$0.25 per subscriber unit.<sup>33</sup>

19. Since preparing the *FY2004 NPRM*, we have received revised CMRS cellular and mobile unit estimates that result in a reduction in the per unit fee from \$0.26 to \$0.25. Based on our revised estimate of 153.0 million units, the CMRS cellular and mobile fee rate will be \$0.25 per subscriber unit.

#### D. Non-Geostationary Orbit Space Stations

20. New Operating Globalstar LLC ("Globalstar"), Space Imaging LLC ("Space Imaging") and ORBCOMM LLC ("ORBCOMM") filed comments asking the Commission to reduce the proposed FY2004 regulatory fee for non-geostationary orbit ("NGSO") satellite system licensees.<sup>34</sup> Globalstar maintains that the Commission has proposed a nearly 50% increase in the FY2004 fee for NGSO satellite systems of the FY2003 fee, a result of the decrease from seven to five in the number of estimated payment units calculated by the Commission between FY2003 and FY2004.<sup>35</sup> Globalstar argues that the smaller number of NGSO operators in FY2004 should reduce the level of Commission regulatory activity relating to NGSOs and should therefore result in a reduced regulatory fee.<sup>36</sup> Globalstar argues further that the 50% increase in fees for NGSO satellite licensees is not proportionate to the increase in appropriations or to the increase in fees

<sup>31</sup> The auction of 24 GHz Service licenses (Auction No. 56) is scheduled to begin July 28, 2004. See *Public Notice*, DA 04-1271 (released May 5, 2004); see also Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to Licensed Fixed Services at 24 GHz, WT Docket No. 99-327, *Report and Order*, 15 FCC Rcd 16934 (2000). The Commission auctioned 39 GHz licenses in Auction No. 30. See 39 GHz Band Auction Closes," *Public Notice*, 15 FCC Rcd 13648 (WTB 2000); see also Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600 (1997). We also note that most Multiple Address Systems spectrum (MAS) licenses were licensed by auction and on a geographic area basis, but in the lower 900 MHz band. See "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (WTB 2001); Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Report and Order*, 15 FCC Rcd 11956, *Erratum*, 15 FCC Rcd 16415 (2000) (designating certain MAS spectrum to be licensed by auction and on a geographic basis). Additional information regarding Commission auctions may be obtained via the FCC's Web site at <http://wireless.fcc.gov/auctions/>.

<sup>24</sup> XO Comments at 4–5.

<sup>25</sup> *Id.* at 5. XO mistakenly asserts that the fees imposed on LMDS licenses are assessed on a "per station" basis. *Id.* In fact, these fees are assessed on a "per call sign" basis. See *NPRM Attachment D*, "FY2004 Schedule of Regulatory Fees."

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 5.

<sup>29</sup> Replies of RTG at 5.

<sup>30</sup> Replies of RTG at 5–6.

<sup>32</sup> Rural Cellular Association Comments at 2–3.

<sup>33</sup> Verizon Wireless Replies at 4.

<sup>34</sup> Comments of Globalstar at 1; Space Imaging at 1; ORBCOMM at 1.

<sup>35</sup> Globalstar Comments at 1–2.

<sup>36</sup> *Id.*, at 4.

charged in other fee categories.<sup>37</sup> Globalstar urges the Commission to revise the NGSO satellite regulatory fees downward by reducing the revenue requirement for NGSOs, combining the revenue requirements for GSO and NGSO satellite licensees, or maintaining the FY2003 regulatory fee for NGSOs.<sup>38</sup> Satellite Imaging and ORBCOMM support Globalstar's arguments.

21. The increase in the NGSO satellite system fee is the direct result of a decrease from seven to five in the number of estimated payment units calculated by the Commission between FY2003 and FY2004. As we explained, *supra* at footnote 2, because the annual expected revenue is adjusted each year by the number of estimated payment units, the actual fee may increase by a number other than the 1.5%. Moreover, as we discussed, *supra* at section II.A.3., section 9 does not require that regulatory fees be precisely calculated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.<sup>39</sup>

22. Our procedures for determining the annual regulatory fee amounts for each of our fee categories is detailed in the Discussion section of this *Report and Order*. We recognize that annual fee amounts in categories populated by small numbers of payment units can fluctuate considerably when payment units enter or exit the fee service category. We remind regulatees of this fact in our regulatory fee proceedings each year.<sup>40</sup>

23. Nonetheless, we recognize that a 43% fee increase is significant, especially considering the absolute dollar amount of the NGSO category's per-unit fee. An unexpected fee increase of 43% introduces an aspect of financial uncertainty in any industry, regardless of its financial state.

24. Given the small number of licenses in this fee category, we therefore conclude that relief is warranted for NGSO licensees. In FY2003, the fee assessed per operational system in non-geostationary orbit (NGSO) was \$108,375. In our *FY2004*

*NPRM*, we proposed a per unit fee of \$154,425. Because we have concluded that relief for this fee category is warranted, we will assess a FY2004 fee of \$131,400 per license.<sup>41</sup> This will provide a financially challenged industry some relief.

25. The FY2004 NGSO per-system regulatory fee is therefore set at \$131,400, rather than the \$154,425 amount that was in the proposed FY2004 fee schedule. We will revise the fee schedule so that the lost revenue from the NGSO category is recouped by allocating a very small assessment across all regulatory fee categories.

#### *E. International Bearer Circuits*

26. Tyco Telecommunications (U.S.) Inc. ("Tyco") challenges the regulatory fee for the international bearer circuit category and the manner in which the Commission determines the fee rate for this category. Tyco argues: (1) The Commission's capacity-based methodology for determining regulatory fees for international bearer circuits favors older, lower-capacity systems to the detriment of newer, higher-capacity systems; (2) the current methodology does not account for the reduced regulation of private submarine cable operators; and (3) the Commission's method of imposing fees on a company's "lit and sold" (also known as "active") bearer circuit capacity is at odds with how private submarine cable operators actually sell capacity today, thereby requiring operators to expend time to determine whether and when fees apply to them based on the Commission's definition of "active."<sup>42</sup>

27. Tyco proposes that the following changes be made to the regulatory fee regime: (1) Separate the private submarine cable operator subcategory from the existing international bearer circuit fee category by creating a new private submarine cable operator category; (2) allocate the revenue requirement now proposed for all international bearer circuit operators between the two new fee categories by determining the respective regulatory burden caused by the two new categories of payees; and (3) adopt a flat, per-cable-landing-license fee for private submarine cable operators.

28. The Satellite Industry Association ("SIA") and FLAG Telecom Group Limited ("FLAG") support Tyco's position. SIA notes that satellite operators also provide international circuits on a non-common carrier basis

and requests that the Commission reform its international bearer circuit regulatory fee regime to reflect the disparate regulatory costs generated by common carriers and non-common carriers.<sup>43</sup> Specifically, SIA states that the new fee category proposed by Tyco should include non-common carrier satellite providers as well as private submarine cable providers.<sup>44</sup> FLAG supports the imposition of a flat regulatory fee on cable landing licensees.<sup>45</sup>

29. We conclude that the legal arguments made by Tyco, SIA and FLAG warrant further consideration. However, we did not solicit comment in our *FY2004 NPRM* on the many complex issues raised by the commenters concerning our international bearer circuit fee category. We therefore do not have a record to take action on these issues at this time. We agree with the commenters that the use of a fee system based on licenses, rather than circuits, would be administratively simpler for both the Commission and carriers.<sup>46</sup> We are also concerned that basing the fees on the active circuits may provide disincentives to carriers to initiate new services and to use new facilities efficiently.<sup>47</sup> A more complete record on these issues is needed. Consequently, we plan to raise these issues and seek comment in our *FY2005 NPRM* on possible changes to the circuit-based fees structure for international carriers.

30. Commenters also raised procedural issues concerning the calculation and obligation to pay regulatory fees. For example, FLAG states that it is difficult for private submarine cable operators to price their offerings to customers because it is frequently difficult to determine with certainty which party—operator or customer—in a particular transaction is responsible for paying the necessary regulatory fees.<sup>48</sup> Upon the release of

<sup>43</sup> SIA Replies at 4.

<sup>44</sup> *Id.* at 3.

<sup>45</sup> FLAG Replies at 3.

<sup>46</sup> Tyco Comments at 15–17, 23–24; FLAG Replies at 1–2.

<sup>47</sup> Tyco Comments at 10.

<sup>48</sup> *Id.* at 1–2. Tyco also argues that the calculation used to derive bearer circuit fees may systematically underestimate the amount of active capacity subject to regulatory fees, because, currently, only U.S.-licensed common carriers and common carrier satellite operators are required to file circuit status reports. We find that circuit status reports as well as the actual payments from the previous year provide a reasonable basis for our estimates. We note that in a separate proceeding the Commission has sought comment on whether non-common carriers should also be required to file circuit status reports. See Reporting Requirements for U.S. Providers of International Telecommunications Service; Amendment of Part 43 of the Commission's

<sup>37</sup> *Id.*, at 5.

<sup>38</sup> *Id.*, at 7–8.

<sup>39</sup> Moreover, we find that a number of ongoing or recently completed activities at the Commission in FY2004 have an impact on the NGSO fee category, including: (1) Rulemaking proceedings concerning (a) NGSO spectrum, (b) realignment of big low earth orbit ("Big LEO") satellite systems, (c) space station licensing reform, (d) bond issuances, (e) E911 Call Center Reporting Requirements—primarily affecting NGSOs in the mobile satellite service; (2) satellite milestone reviews for 2 GHz systems; (3) orbital debris matters; and (4) U.S. representation and participation in International Telecommunications Union ("ITU") Working Groups and Study Groups regarding shared spectrum policy.

<sup>40</sup> See footnote 2 of this *Report and Order*.

<sup>41</sup> This is an amount roughly halfway between the FY2003 regulatory fee for NGSO satellite systems (\$108,375) and the initial fee amount in our proposed FY2004 Fee Schedule (\$154,425).

<sup>42</sup> Tyco Comments at pages i–ii and 13–14.

our *FY2004 Report and Order*, we will issue a Public Notice that provides further guidance on the procedural points raised by the commenters with regards to regulatory fee payments for international bearer circuits.

#### F. Secondary Broadcast Services

31. Mr. Chris Kidd submitted comments regarding the proposed regulatory fees for secondary broadcast services, such as FM boosters and translators. Mr. Kidd states that FM translators should be placed in a distinct fee category rather than sharing a fee category with FM Boosters and argues that FM boosters should be added to the fee category with low power television ("LPTV"), TV Translators and TV Boosters.<sup>49</sup> According to Mr. Kidd, FM translators have a higher degree of business and programming restrictions placed on them than do TV translators, as well as an effective radiated power ("ERP") restriction, making them a less desirable license to hold and therefore warranting a lower regulatory fee.<sup>50</sup>

32. We find that there is an inadequate record to warrant revising our two existing fee categories for secondary broadcast services. We originally devised these categories on the basis of the nature of service (a category for television and a category for FM radio) due to differing characteristics of these services. We have no reason to change this finding at this time. Further, we note that the need for some of the restrictions placed on FM translators is the direct result of their tendency to interfere with the operation of other services within their range of signal reach. Despite the restrictions, FM translators are still subject to interference complaints, all of which must be addressed and resolved by the Commission. For these reasons, we do not find a basis to make changes to our existing fee categories for secondary broadcast services.

#### G. Procedural Changes for Notification, Assessment and Collection of Regulatory Fees

33. Last year, we proposed that we would not disseminate general public notices to regulatees through surface mail informing them of when regulatory fees are due. We explained that with the widespread use of the Internet, we believe that disseminating public notices through surface mail is not an efficient use of our time and resources.

We believe we can better serve the public by providing this type of general information on our Web site, while exploring ways to disseminate specific regulatory fee bills or assessments through surface mail. We made the same proposal this year in our *FY2004 NPRM* and received no comments on the matter.

34. Accordingly, we will provide public notices, fact sheets and all necessary regulatory fee payment procedure information on our Web site at <http://www.fcc.gov/fees>, just as we have for the past several years; but we will no longer disseminate public notices through surface mail. In the event that regulatees do not have access to the Internet, hardcopies of public notices and other relevant materials will be mailed upon request to anyone who contacts the FCC Consumer Center at (888) 225-5322.

35. In our *FY2004 NPRM*, we also proposed to disseminate fee assessments to five categories of licensees: Media services licensees, satellite space station licensees, interstate telecommunications service providers, cable television system operators and commercial mobile radio service operators. We stated that we were making these proposals and exploring options for these service categories in an effort to improve the efficacy of our fee collection process. Based on comments received in this proceeding and the current resources available to the Commission, we set forth below how we will proceed with these service categories.

##### 1. Media Services Licenses

36. In *FY2003*, the Commission mailed fee assessment notifications to media services licensees for the first time.<sup>51</sup> We propose to repeat this endeavor this year in the same or similar fashion. We received no comments specific to our proposal to repeat the mail out. Therefore, we will repeat the endeavor this year with one exception. Last year, we sent two separate mailings of postcards on a facility ID basis, thereby giving licensees two opportunities to update or correct information. Because of our success with last year's fee assessment postcard initiative, we will only mail a single

round of postcards on a facility ID basis this year.

37. As was the case last year, we will mail the postcards to licensees and any of their other points of contact on file (the actual payers of their prior year regulatory fees, such as their corporate headquarters, legal representatives, *etc.*). By doing so, licensees and their other points of contact will all be furnished with the same information for each facility ID in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to different addresses on file for each facility ID also enables parties for each facility ID the opportunity to visit a Commission-authorized Web site to (1) update or correct information on the postcard, and (2) certify their fee-exempt status, if any. The Web site will be made available this summer. In addition to the postcards directing parties to a Web site to make updates or corrections to information, the postcards will also include the telephone number for the FCC CORES Help Desk at (877) 480-3201, Option 4, which can be called to obtain clarification on procedures.

38. We stress to media services licensees that assessment postcards are being mailed to these licensees to assist them in completing the Form 159, and that this form must accompany the fee payment. The postcard is not intended to be a substitute for a Form 159. Media services licensees must still submit a completed Form 159 with their fee payments, despite having received an assessment postcard. We are unable to process regulatory fee payments submitted without a completed Form 159.

39. We also emphasize that the most important data element to include on the Form 159 is the station's *facility ID*. The facility ID is a unique identifier that never changes over the course of a station's existence. Despite the Form 159 filing instructions that call for each station's call sign and facility ID to be provided, we received many Form 159s from media services entities that provided only a station's call sign.

##### 2. Satellite Space Station Licensees

40. Last year, we mailed regulatory fee assessment letters for the first time to satellite space station licensees. In our *FY2004 NPRM*, we proposed to repeat this mailing again this year.

41. Despite our original proposal, we will not send assessment letters to satellite licensees this year. Rather, our experience with last year's fee assessment effort has given us the ability to mail regulatory fee bills through surface mail to licensees in our

Rules, *Notice of Proposed Rulemaking*, IB Docket No. 04-112, FCC 04-70, released April 12, 2004.

<sup>49</sup> Mr. Chris Kidd Comments at 4-5.

<sup>50</sup> Mr. Chris Kidd Comments at 4.

<sup>51</sup> Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations in *FY2003*, nor will they be issued for them in *FY2004*.

two satellite space station service categories. Specifically, geostationary orbit space station ("GSO") and direct broadcast satellite ("DBS") service licensees will receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1, 2003; and (2) were not co-located with and technically identical to another operational satellite on October 1, 2003 (*i.e.*, were not functioning as a spare satellite). NGSO licensees will receive bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1, 2003. It is important to note that a "bill" is distinct from an "assessment" in that a "bill" is automatically entered into the agency's financial system as a fee obligation owed to the Commission. The Accounts Receivable, or bill, will reflect the estimated amount for each license and will have a due date of the last day of the filing window. The Commission is taking this step as part of its efforts to modernize its financial practices. Having the bill's obligation already entered as an Accounts Receivable makes the agency's process of determining penalties or denial-of-service due to non-payment quicker and more efficient than making similar determinations for those who receive assessments, which are not automatically entered into the agency's Accounts Receivable system. The Commission intends to eventually bill all fee payers.

42. Note that bills sent to GSO, DBS and NGSO licensees will only be for the satellite or system aspects of their respective operations. These licensees may have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, *etc.*) and are expected to meet their full fee obligations for their entire portfolio of licensees held.

### 3. Interstate Telecommunications Service Providers

43. In our *FY2004 NPRM*, we stated that we will continue to generate and send pre-completed Form 159-W assessments to Interstate Telecommunications Service Providers ("ITSP") to assist them in their payment of regulatory fees. We received no comments or reply comments on this matter.

44. In FY2001, the Commission began sending pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider

(ITSP) regulatory fee.<sup>52</sup> The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A report, which carriers are required to submit by April 1st of each year. Subsequently, in FY2002 and FY2003, the FCC Form 159-W was refined to simplify the regulatory fee payment process.<sup>53</sup> Although in FY 2004 we will continue to generate and mail pre-completed FCC Form 159-W's, this year we will also consider these mailings as "bills" rather than assessments. Other than the distinction that these "bills" will be entered into the Commission's financial system, there will be no procedural changes in using FCC Form 159-W to submit payment of FY2004 ITSP regulatory fees.

### 4. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services

45. In our *FY2004 NPRM*, we proposed to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information from the Numbering Resource Utilization Forecast (NRUF) report. We proposed that subscriber data from the NRUF report be used to compute and assess a regulatory fee obligation. We solicited comments on the feasibility of this assessment proposal. CTIA and the Rural Cellular Association (RCA) request clarification of our proposal to send assessment letters to CMRS providers based on Numbering Resource Utilization Forecast (NRUF) reports.<sup>54</sup> Cingular and Dobson oppose the use of NRUF data.<sup>55</sup> For the reasons stated below, we will use NRUF "assigned" telephone number counts<sup>56</sup> reported for the period ending December 31, 2003.<sup>57</sup> We note that the use of December 31 is consistent with our past practice of requiring regulatory fee payments to be

<sup>52</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order*, 16 FCC Rcd 13590 (2001) at 67. See also FCC Public Notice—Common Carrier Regulatory Fees (August 3, 2001) at 4.

<sup>53</sup> Beginning in FY2002, Form 159-W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159-W in lieu of completing Form 159 Remittance Advice Form.

<sup>54</sup> CTIA and RCA Comments.

<sup>55</sup> Cingular Wireless LLC Comments and Dobson Communications Corporation Replies.

<sup>56</sup> "Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers." 47 CFR 52.15(f)(iii).

<sup>57</sup> For most entities, this submission was due February 1, 2004.

based on subscriber counts as of December 31.

46. Cingular states that NRUF assigned number counts do not reflect porting and therefore may be an inaccurate subscriber count proxy.<sup>58</sup> We find that Cingular's concern is valid and we will therefore adjust the NRUF "assigned" number counts to net Type 0 ports ("in" and "out") so that our assessment will more accurately reflect a carrier's actual subscriber count. Cingular also notes that, as a result of number pooling, many wireless carriers receive their new numbers as thousand-number blocks and that, within each block, up to 100 numbers can be retained by the donating carrier.<sup>59</sup> Retained numbers, however, are reported in the NRUF as assigned to the holder of the thousand block thereby resulting in an undercount for the donating carrier and an overage for the recipient. At this time, we are unable to address this issue. CMRS providers, however, may correct our estimated counts and therefore will not be harmed should their actual subscriber count be lower than their NRUF assigned count (netted for porting).

47. Accordingly, we will use NRUF report data and our Local Number Portability (LNP) database to compile an estimated subscriber count of active, assigned telephone numbers, net of ported numbers. The proposed regulatory fee payment will be based on this net figure. We will send out two assessment letters to CMRS Cellular and Mobile providers using data from the NRUF report. The first assessment letter will include assigned number counts (netted for porting), which will include a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based. The letters will not include assigned number counts by OCNs, but rather an aggregate of assigned numbers for each carrier.

48. If a carrier determines that there is a discrepancy between the number of estimated subscribers we have calculated using the NRUF and LNP databases and what the carrier believes to be its total, the carrier may correct our estimate of the aggregate total directly on the letter and state a reason for the discrepancy. If the OCNs identified on the accompanying letter do not belong to the carrier, the OCNs which do not belong on the list should be indicated, and the total number of subscribers as of December 31, 2003

<sup>58</sup> Cingular Comments at 3-4.

<sup>59</sup> *Id.* at 4-5. Cingular states that in two populous California codes (310 and 909), the "contamination threshold" has been increased to 25%, so that, in each thousand block a carrier receives, up to 250 numbers already may be retained.



should be provided. If some of the subscribers are no longer customers, but have been assigned to another company, please indicate the company which has acquired these subscribers. This information, including any changes in the estimated aggregate total (carrier must provide a reason for the change), changes in OCNs, and the name of the company that has acquired some of the subscribers, should be mailed to:

Federal Communications Commission, 445 12th Street, SW., Room 1-C848, Washington, DC 20554 by July 21, 2004. We will review the letters, and decide whether to accept the revised totals. Based upon this feedback, we will send out a second assessment letter that will coincide with the payment period of regulatory fees. This second assessment letter with aggregate totals will constitute the basis upon which FY2004 regulatory fees will be paid. Carriers will not have an opportunity to correct the aggregate subscriber count on the second assessment letter. When making the regulatory fee payment by mail, carriers must include the second assessment letter along with FCC Form 159 Remittance Advice. Of course, paying electronically using Fee Filer, carriers will not have to send in the second assessment letter.

49. Letters of assessment, with assigned number counts (netted for porting), will be mailed to carriers that filed an NRUF report. Since not all carriers are required to file NRUF reports, it is conceivable that some carriers will not be sent a letter of assessment. For those carriers, the current methodology<sup>60</sup> in place for CMRS Wireless services will apply. They should use their subscriber count as of December 31, 2003 and submit payment accordingly on FCC Form 159. However, whether a carrier receives a letter of assessment or computes the subscriber count itself, the Commission reserves its right, under the Communications Act, to audit the number of subscribers upon which regulatory fees were paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on a letter of assessment, we reserve the right to assess a carrier for the difference between what was paid and what should have been paid.

50. In its comments, Cingular also argues that the use of NRUF data for regulatory fee assessments would violate the Paperwork Reduction Act

(PRA) because the Office of Management and Budget (OMB) never approved the use of NRUF for purposes other than number optimization.<sup>61</sup> Cingular argues that the use of the NRUF information in the regulatory fee context “would have significant consequences for the accuracy of the data as a surrogate for any individual carrier’s current subscriber or telephone number count.”<sup>62</sup>

51. We note that in *Tozzi*,<sup>63</sup> the U.S. District Court for the District of Columbia rejected essentially the same argument. There, plaintiffs argued that the EPA could not use data collected under an OMB-approved information collection for a new purpose “without first obtaining a separate OMB approval,”<sup>64</sup> and that using the data for a use different than that approved by OMB “constitutes a substantive or material modification,” which requires approval from OMB.<sup>65</sup> The court rejected these arguments,<sup>66</sup> and found that the plaintiffs “failed to show that OMB must separately approve all new uses of data that agencies have previously collected.”<sup>67</sup> The court stated that that “this kind of Government action [a new use for information collected] does not fall under the category of harms the PRA was enacted to address.”<sup>68</sup> We therefore reject Cingular’s argument.

#### 5. Cable Subscriber—Billing

52. In our *FY2004 NPRM*, we proposed to modify our payment unit assessment methodology and our fee collection procedures for the cable industry by assessing regulatory fees for individual cable operators based on cable subscriber counts that the operators have reported in publicly

<sup>61</sup> Cingular Comments at 7–9, citing 44 U.S.C. 3506(c)(1)(B)(iii) (each information collection must inform the public of “the reasons the information is being collected” and “the way such information is to be used”). The NRUF report is a Paperwork Reduction Act (PRA) information collection approved by OMB under OMB Control No. 3060–0895. See *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission*, 69 FR 5545 (Feb. 5, 2004) (“The information will be used by the Commission, state regulatory commissions, and the NANP Administrator to monitor numbering resource utilization and to project the date of area code and NANP exhaust.”)

<sup>62</sup> Cingular Comments at 8.

<sup>63</sup> *Tozzi v. U.S. Environmental Protection Agency*, No. Civ. 98–0169(TFH) (D.D.C. Apr. 21, 1998) (1998 WL 1661504).

<sup>64</sup> *Id.* at \*2.

<sup>65</sup> *Id.* at \*2–\*3.

<sup>66</sup> *Id.* at \*3 (observing that “the EPA has not made a substantive or material modification of the use of the data. \* \* \* The information itself is not modified in any way. The way in which it is collected is not modified in any way.”).

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

<sup>68</sup> *Id.*

available data sources. The primary data sources we proposed to reference were the *Broadcasting and Cable Yearbook 2003–2004* (“Yearbook”)<sup>69</sup> and industry statistics published by the National Cable and Telecommunications Association (“NCTA”).<sup>70</sup>

53. We proposed that the 25 largest multiple-system operators (“MSOs”), as listed on NCTA’s web page, would base their fee obligations on their subscriber counts as reported by NCTA. Cable operators listed in the Yearbook would base their fee obligations upon their basic subscriber counts as reported in the Yearbook. Cable operators not in NCTA’s top 25 MSOs and not listed in the Yearbook would certify their aggregate basic subscriber counts as of December 31, 2003 on the Remittance Advice FCC Form 159 with the understanding that we would corroborate the certified counts with other publicly available data sources.<sup>71</sup> NCTA and the American Cable Association (“ACA”) support our overall proposed assessment methodology, though both parties urge the Commission to provide an opportunity for cable operators listed in the data sources to rectify their subscriber numbers.<sup>72</sup> Based on our original proposal and the comments received, we now provide the following guidance to cable operators.

#### a. Fee Assessment and Collection Procedures for NCTA’s 25 Largest MSOs and Cable Operators Reported in the 2003–2004 Edition of the Yearbook

54. NCTA’s 25 largest MSOs and cable operators reported in the 2003–2004 edition of the Yearbook will receive two rounds of fee assessment letters via surface mail—an *initial* assessment and a *final* assessment. The first assessment will be based on the number of basic cable subscribers reported by NCTA or in the Yearbook—the 25 largest MSOs shall refer to the subscriber counts reported by NCTA and all other operators shall refer to the subscriber counts reported in the Yearbook.

55. We assume that the subscriber counts reported by NCTA and the Yearbook will coincide closely with the

<sup>69</sup> *Broadcasting and Cable Yearbook 2003–2004*, by Reed Elsevier, Inc., Newton, MA, 2003.

Subscriber counts reported in Section C, “Multiple System Operators, Independent Owners and Cable Systems,” page C–3.

<sup>70</sup> NCTA maintains an updated list of the 25 largest multiple-system operators at its Web site located at <http://www.ncta.com>.

<sup>71</sup> Sources consulted by the Commission may include but not be limited to *Cable TV Investor* by Kagan World Media and *Television and Cable Factbook* by Warren Communications.

<sup>72</sup> NCTA Comments at 3, and ACA Comments at 1.

<sup>60</sup> Federal Communications Commission, Regulatory Fees Fact Sheet, “What You Owe—Commercial Wireless Services, July 2003, page 1.



number of subscribers served by cable operators as of December 31, 2003. However, if the number of subscribers on the initial assessment differs from the number of subscribers served as of December 31, 2003, we ask that cable operators amend their assessment letters by correcting the number of basic subscribers served and mail the amended letter back to the Commission at 445 12th Street, S.W., Room 1-C807, Washington, DC 20554. The amended assessment letter should indicate the specific reasons for the difference and indicate how and when the difference occurred (e.g. acquisition or sale of cable system, name of buying/selling entity, date of transaction, etc.). The amended letter should be mailed to the Commission address above by July 21, 2004. If cable operators do not contact us, we will assume the initial assessment is correct and we will expect the fee payment to be based on the number of subscribers on the initial assessment. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments.

56. We will review the amended assessment and will either accept the amendment, or contact the operator for more information. Upon establishing an agreed upon subscriber count, we will mail a final assessment letter that states the agreed upon subscriber count. If the cable operator and the Commission are unable to establish an agreed upon subscriber count by the due date of regulatory fees, the operator will be expected to submit payment for the number of subscribers on the initial assessment.

**b. Fee Assessment and Collection Procedures for Cable Operators Not Listed in NCTA's 25 Largest MSOs and Not Reported in the 2003–2004 Edition of the Yearbook**

57. Cable operators not listed in NCTA's 25 Largest MSOs and not reported in the *Yearbook* will not receive assessment letters. If an operator's subscriber base is not reported by NCTA or in the *Yearbook*, it should simply provide its aggregate basic subscriber count as of December 31, 2003 and certify this subscriber count in Block 30 of the FCC Form 159 Remittance Advice. It is not necessary to provide a listing of the Community Unit Identifier Numbers ("CUIDs"), nor a breakdown of individual subscriber counts for each CUID. A certified aggregate subscriber count for the operator's system(s) will suffice.

58. Cable operators who do not have access to the Internet to view the NCTA

list or *Yearbook* may contact the FCC CORES Help Desk at (877) 480–3201, Option 4, to obtain their publicized subscriber count, if available, in either data source.

59. In our *FY2004 NPRM*, we proposed to institute a new *de minimis* fee exemption for cable operators serving 250 or fewer subscribers.<sup>73</sup> Upon further analysis of our proposal, we find that it is not feasible to implement. An exemption of this magnitude—and one tied to a payment unit amount rather than a dollar amount—is inconsistent with the Commission's general \$10 fee exemption that is in place for all regulatees. If we implemented a 250 subscriber *de minimis* exemption for cable subscribers, regulatees in other industries understandably would seek similar treatment. The task of managing similar yet different *de minimis* exemptions across multiple fee categories in different industries would prove to be too cumbersome for the Commission to perform when determining the fee sufficiency of various licensees. For these reasons, we decline to adopt our proposal for *de minimis* fee exemption relief designed exclusively for cable television system operators.

**H. Future Streamlining of the Regulatory Fee Assessment and Collection Process**

60. In our *FY2004 NPRM*, we welcomed comments on a broad range of options concerning our commitment to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. Our areas of particular interest included: (1) The process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, i.e. through surface mail, e-mail, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved and whether to make use of Fee Filer mandatory over a particular monetary level or for licensees holding a certain number of licenses; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way.

61. Kenneth J. Brown filed comments on this issue. Mr. Brown argues that we

<sup>73</sup> ACA requested that the *de minimis* exemption be expanded to include cable operators serving less than 1,000 subscribers. See ACA comments, *passim*. In light of our decision that implementation of a *de minimis* exemption of any size is not feasible, ACA's argument is moot.

should include an FCC telephone number on the assessment postcards that will be mailed to media services entities to assist small businesses with no connection to the Internet.<sup>74</sup> Last year's assessment postcards only included a Commission-authorized web address entities could access to make various updates or corrections to the information on file for their facility ID. In addition to the web address, we will include the FCC CORES Help Desk telephone number on this year's fee assessment postcards.

62. Mr. Brown also notes that the assessment postcards state that the fee cited is the base fee only for the facility ID in question, and does not include any fee(s) for supplemental services such as broadcast auxiliary service.<sup>75</sup> Last year, we mailed postcards for all primary media services and all supplemental media services with the exception of the broadcast auxiliary service. We will repeat this exercise this year. The postcards will again be mailed out on a facility ID basis. We find that it is clear to the recipient of the postcard that the cited fee is only for the facility ID in question. As a point of clarification, the text of this year's postcards will make it apparent to recipients that the cited fee is only for the facility ID in question and does not include the recipient's fee obligation(s) for any supplemental services.

63. Finally, Mr. Brown responded to our solicitation for comments on migrating licensees to Fee Filer—our electronic payment software application available on the Commission's Web site. Mr. Brown opposed any such mandatory migration to Fee Filer. He noted that last year the mandatory Internet browser to access all of the features of the Universal Licensing System (the FCC's licensing database for wireless services) and the mandatory Internet browser to access Fee Filer were not the same edition of browsers.<sup>76</sup>

64. We will not at this time establish any thresholds (monetary amount of fee obligation, number of licenses held, etc.) for making use of Fee Filer mandatory. However, we strongly encourage regulatees to make their fee payments via Fee Filer regardless of the amount of fee obligation or number of licenses held. Through its evolution, Fee Filer has become an easy and convenient way to make fee payments on a timely basis. Regulatees who use Fee Filer do not expose themselves to the risk of unexpected slow mail delivery that could cause fee payments to be filed late

<sup>74</sup> Mr. Kenneth J. Brown Comments at 1.

<sup>75</sup> Mr. Kenneth J. Brown Comments at 1.

<sup>76</sup> Mr. Kenneth J. Brown Comments at 2.

and hence be subject to a 25% late payment penalty.

65. Regarding Mr. Brown's statement about mandatory browser requirements, while interface problems may prevent the Commission's Universal Licensing System (ULS) and Fee Filer Systems from being accessible via all models and editions of browsers, that does not mean that the Commission imposes browser requirements to access these automated systems. The ULS and Fee Filer systems were developed in different Commission offices, for different purposes, and are maintained by different technical support staff.

66. The specific issue identified by Mr. Brown is that editions of Netscape's browsers in the 4.X series do not interface well with Fee Filer. Netscape first made its 4.X browsers available to the public in 2001 and these versions of Netscape's browsers are now rarely in use.<sup>77</sup> The Commission has been aware of the interface problem and attempted without success to resolve it. When customers access the Fee Filer system via a Netscape browser in the 4.X series, we prompt them with an automated message that they may experience interface problems and recommend that they upgrade their browser to a newer edition. Considering that 4.X is three years old, and that the life expectancy of a browser edition is considerably less than three years, the Commission believes that it is a wiser use of its resources to alert customers to the interface issue and encourage browser upgrades rather than spend further resources to resolve an interface problem with a legacy browser edition.

### *I. Procedures for Payment of Regulatory Fees*

#### *1. De minimis Fee Payment Liability*

67. Regulatees whose *total* regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 are exempt from payment of regulatory fees in FY2004.

#### *2. Standard Fee Calculations and Payment Dates*

68. As in prior years, the responsibility for payment of fees by service category is as follows:

(a) Media services: The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2003. However, in

instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) Wireline (Common Carrier) Services: Fees must be paid for any authorization issued on or before October 1, 2003. However, where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) Wireless Services: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten-years and paid throughout the year.

(d) Cable Services (fees based upon a subscriber count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment.<sup>78</sup> CARS licensees: Fees must be paid for any authorization issued on or before October 1, 2003.

(e) International Services: Earth stations, geostationary orbit space stations, international public fixed radio services and international broadcast stations: Payment is calculated per operational station. Non-geostationary orbit satellite systems: Payment is calculated per operational system. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due. International bearer circuits: Payment is calculated per active circuit as of December 31, 2003.

<sup>78</sup> Cable system operators and MSOs that are not listed in any of the data sources indicated in this item 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. Operators may base their count on "a typical day in the last full week" of December 2003, rather than on a count as of December 31, 2003.

69. The Commission strongly 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. 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.

### *J. Enforcement*

70. Finally, as a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, *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"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 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 underpayments 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.

71. Furthermore, we recently amended our regulatory fee rules effective October 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

### **III. Procedural Matters**

72. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act

<sup>77</sup> Netscape currently offers the 6.X and 7.X editions of its browsers. Currently, fewer than 1% of customer visits to Fee Filer are done so via Netscape browsers in the 4.X series, and as newer editions of browsers are made available, fewer users will hold onto the 4.X series.

of 1934, as amended.<sup>79</sup> It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective August 6, 2004. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Commission's Consumer And Governmental Affairs Bureau, Reference Information Center, send this to the Chief Counsel for Advocacy of the Small Business Administration (SBA). Finally, it is ordered that this proceeding is terminated.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

#### **Attachment A—Final Regulatory Flexibility Analysis**

A. As required by the Regulatory Flexibility Act (RFA),<sup>80</sup> the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004*. Written public comments were sought on the FY 2004 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>81</sup>

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

B. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of \$272,958,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

#### **II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

C. None.

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

73. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of

small entities that may be affected by the proposed rules and policies, if adopted.<sup>82</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>83</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>84</sup> A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>85</sup>

74. *Small Businesses*. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>86</sup>

75. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.<sup>87</sup>

76. *Small Governmental Jurisdictions*. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>88</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>89</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

77. We have included small incumbent local exchange carriers 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>90</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>91</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

78. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>92</sup> According to Commission data,<sup>93</sup> 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

79. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>94</sup> According to Commission

<sup>82</sup> 5 U.S.C. 603(b)(3).

<sup>83</sup> 5 U.S.C. 601(6).

<sup>84</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

<sup>85</sup> 15 U.S.C. 632.

<sup>86</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>87</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>88</sup> 5 U.S.C. 601(5).

<sup>89</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299–300, Tables 490 and 492.

<sup>90</sup> 15 U.S.C. 632.

<sup>91</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. See 13 CFR 121.102(b).

<sup>92</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

<sup>93</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

<sup>94</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>79</sup> See 47 U.S.C. 154(i)–(j), 159, and 303(r).

<sup>80</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 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>81</sup> See 5 U.S.C. 604.

data,<sup>95</sup> 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

80. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>96</sup> According to Commission data,<sup>97</sup> 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

81. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>98</sup> According to Commission data,<sup>99</sup> 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

82. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone service providers. The appropriate size standard under SBA rules is for the

category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>100</sup> According to Commission data,<sup>101</sup> 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

83. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>102</sup> According to Commission data,<sup>103</sup> 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

84. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>104</sup> According to Commission data,<sup>105</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

85. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a

business is small if it has 1,500 or fewer employees.<sup>106</sup> According to Commission data,<sup>107</sup> 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

86. *800 and 800-Like Service Subscribers.*<sup>108</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>109</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.<sup>110</sup> According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

87. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average

<sup>95</sup> "Trends in Telephone Service" at Table 5.3.  
<sup>96</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>97</sup> "Trends in Telephone Service" at Table 5.3.  
<sup>98</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>99</sup> "Trends in Telephone Service" at Table 5.3.

<sup>100</sup> 3 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>101</sup> "Trends in Telephone Service" at Table 5.3.

<sup>102</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>103</sup> "Trends in Telephone Service" at Table 5.3.

<sup>104</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>105</sup> "Trends in Telephone Service" at Table 5.3.

<sup>106</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>107</sup> "Trends in Telephone Service" at Table 5.3.

<sup>108</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>109</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>110</sup> FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

annual receipts.<sup>111</sup> For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.<sup>112</sup> Of this total, 273 firms had annual receipts of under \$10 million, and an additional 24 firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

88. The second category—Other Telecommunications—includes “establishments primarily engaged in \* \* \* providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>113</sup> According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.<sup>114</sup> Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional six firms had annual receipts of \$10 million to \$24,999,999. Thus, under this second size standard, the majority of firms can be considered small.

89. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>115</sup> and “Cellular and Other Wireless Telecommunications.”<sup>116</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>117</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or

more.<sup>118</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>119</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>120</sup> Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

90. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments “primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.”<sup>121</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.<sup>122</sup> According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.<sup>123</sup> Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999.<sup>124</sup> Thus, under this size standard, the great majority of firms can be considered small entities.

91. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the

broad economic census category “Cellular and Other Wireless Telecommunications.”<sup>125</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>126</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>127</sup> Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.<sup>128</sup> We have estimated that 294 of these are small, under the SBA small business size standard.<sup>129</sup>

92. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of “Cellular and Other Wireless Telecommunications.”<sup>130</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>131</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or

<sup>111</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

<sup>112</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513340 (issued October 2000).

<sup>113</sup> Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

<sup>114</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513390 (issued October 2000).

<sup>115</sup> 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

<sup>116</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>117</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

<sup>118</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>119</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>120</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>121</sup> Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, “On-Line Information Services” (changed to current name and to code 518111 in October 2002).

<sup>122</sup> 13 CFR 121.201, NAICS code 518111.

<sup>123</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

<sup>124</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

<sup>125</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>126</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>127</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>128</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

<sup>129</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

<sup>130</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>131</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

more.<sup>132</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

93. In the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>133</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>134</sup> The SBA has approved this definition.<sup>135</sup> An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>136</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>137</sup> An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>138</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>139</sup>

<sup>132</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

<sup>133</sup> Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (Paging Second Report and Order); *see also* 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, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

<sup>134</sup> Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

<sup>135</sup> *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>136</sup> *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>137</sup> *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>138</sup> *See* "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>139</sup> *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>140</sup> Of these, we estimate that 589 are small, under the SBA-approved small business size standard.<sup>141</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

94. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>142</sup> The SBA has approved these definitions.<sup>143</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

95. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>144</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>145</sup> According to the most recent *Trends in Telephone Service*

<sup>140</sup> *See* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

<sup>141</sup> 13 CFR 121.201, NAICS code 517211.

<sup>142</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>143</sup> *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>144</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>145</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

data, 719 carriers reported that they were engaged in wireless telephony.<sup>146</sup> We have estimated that 294 of these are small under the SBA small business size standard.

96. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard 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>147</sup> For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>148</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>149</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>150</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>151</sup>

97. 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

<sup>146</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

<sup>147</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, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

<sup>148</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, 11 FCC Rcd 7824, 7852, para. 60.

<sup>149</sup> *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>150</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

<sup>151</sup> *See* "C, D, E, and F Block Broadband PCS Auction Closes," Public Notice, 14 FCC Rcd 6688 (WTB 1999).

"small" or "very small" businesses.<sup>152</sup> Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

98. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>153</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>154</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.<sup>155</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.<sup>156</sup> 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.<sup>157</sup> The SBA has approved these small business size standards.<sup>158</sup> A third auction

commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>159</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

99. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>160</sup> We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>161</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>162</sup> Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>163</sup> The SBA has approved these small size standards.<sup>164</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RsAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status

and won a total of 329 licenses.<sup>165</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>166</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>167</sup>

100. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, authorizing service in the upper 700 MHz band.<sup>168</sup> This auction, previously scheduled for January 13, 2003, has been postponed.<sup>169</sup>

101. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>170</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>171</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>172</sup> SBA approval of these definitions is not required.<sup>173</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and

<sup>152</sup> See "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>153</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).

<sup>154</sup> See "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94-004 (released August 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (released November 9, 1994).

<sup>155</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>156</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>157</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>158</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal

Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>159</sup> See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>160</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>161</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

<sup>162</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88, para. 172 (2002).

<sup>163</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1088, para. 173 (2002).

<sup>164</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>165</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>166</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>167</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>168</sup> Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

<sup>169</sup> See "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

<sup>170</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

<sup>171</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>172</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>173</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).



closed on September 21, 2000.<sup>174</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine 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>175</sup>

102. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>176</sup> The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>177</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>178</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>179</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder

claiming small business status won five licenses.<sup>180</sup>

103. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>181</sup> 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.<sup>182</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

104. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR 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 analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

105. *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 small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business

is a wireless company employing no more than 1,500 persons.<sup>183</sup> According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.<sup>184</sup> If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

106. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>185</sup> This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>186</sup> 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>187</sup> The SBA has approved these small size standards.<sup>188</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>189</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>190</sup> Thirty-nine small businesses

<sup>183</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>184</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).

<sup>185</sup> Amendment of Part 90 of the Commission's Rules To Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

<sup>186</sup> *Id.* at 11068, paras. 291.

<sup>187</sup> *Id.*

<sup>188</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>189</sup> See generally "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>190</sup> See "FCC Announces It Is Prepared To Grant 654 Phase II 220 MHz Licenses After Final Payment

<sup>174</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>175</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>176</sup> 47 CFR 90.814(b)(1).

<sup>177</sup> 47 CFR 90.814(b)(1).

<sup>178</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>179</sup> See "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses To Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>180</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>181</sup> See, "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

<sup>182</sup> See, "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>191</sup> A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.<sup>192</sup>

107. *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, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>193</sup> The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.<sup>194</sup>

108. The Commission's 1994 Annual Report on PLMRs<sup>195</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.

109. *Fixed Microwave Services*. Fixed microwave services include common carrier,<sup>196</sup> private operational-fixed,<sup>197</sup> and broadcast auxiliary radio services.<sup>198</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 created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.<sup>199</sup> The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

110. *39 GHz Service*. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous

calendar years.<sup>200</sup> An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>201</sup> The SBA has approved these small business size standards.<sup>202</sup> 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. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

111. *Local Multipoint Distribution Service*. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>203</sup> The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>204</sup> An additional small business size standard for "very small business" was added 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>205</sup> The

<sup>200</sup> See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order*, 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

<sup>201</sup> *Id.*

<sup>202</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (Vol P); See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

<sup>203</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>204</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>205</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed

Is Made," *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

<sup>191</sup> See "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

<sup>192</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>193</sup> See 13 CFR 121.201, NAICS code 517212.

<sup>194</sup> See generally 13 CFR 121.201.

<sup>195</sup> Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

<sup>196</sup> See 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>197</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>198</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. This service is 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 television pickups, which relay signals from a remote location back to the studio.

<sup>199</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

SBA has approved these small business size standards in the context of LMDS auctions.<sup>206</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 32 small and very small business winning that won 119 licenses.

112. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).<sup>207</sup> Of the 594 licenses, 567 were won by 167 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>208</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 exceeding \$15 million for the preceding three years.<sup>209</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 exceeding \$3 million for the preceding three years.<sup>210</sup> The SBA has approved of these definitions.<sup>211</sup> At this time, we cannot estimate 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 prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

113. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>212</sup> A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.<sup>213</sup> These definitions have been approved by the SBA.<sup>214</sup> An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

114. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>215</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>216</sup> The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>217</sup> There are approximately 1,000 licensees in the Rural

Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

115. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.<sup>218</sup> We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.<sup>219</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 small business size standard.

116. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>220</sup> 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 in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has

Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>206</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>207</sup> See “Interactive Video and Data Service (IVDS) Applications Accepted for Filing,” *Public Notice*, 9 FCC Rcd 6227 (1994).

<sup>208</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

<sup>209</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*, 15 FCC Rcd 1497 (1999).

<sup>210</sup> *Id.*

<sup>211</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>212</sup> Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 paragraph 20 (1998); see also 47 CFR 90.1103.

<sup>213</sup> Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 CFR 90.1103.

<sup>214</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

<sup>215</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 CFR 22.99.

<sup>216</sup> BETRS is defined in section 22.757 and 22.759 of the Commission’s Rules, 47 CFR 22.757 and 22.759.

<sup>217</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>218</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 CFR 22.99.

<sup>219</sup> 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

<sup>220</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>221</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

117. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>222</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 small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>223</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>224</sup>

118. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.<sup>225</sup> "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.<sup>226</sup> The SBA has approved of these definitions.<sup>227</sup> The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database

indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.<sup>228</sup> Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

119. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>229</sup> The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

120. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.<sup>230</sup> According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.<sup>231</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>232</sup> Thus, under this

size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>233</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

121. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>234</sup> "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>235</sup> The SBA has approved these definitions.<sup>236</sup> The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

122. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).<sup>237</sup> In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average

employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>233</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

<sup>234</sup> Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967, para. 77 (2000) (24 GHz Report and Order); see also 47 CFR 101.538(a)(2).

<sup>235</sup> 24 GHz Report and Order, 15 FCC Rcd at 16967, para. 77; see also 47 CFR 101.538(a)(1).

<sup>236</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

<sup>237</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, *Report and Order*, 10 FCC Rcd 9589, 9593, para. 7 (1995) (MDS Auction R&O).

<sup>221</sup> Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

<sup>222</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 CFR 22.1001–22.1037.

<sup>223</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>224</sup> *Id.*

<sup>225</sup> See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>226</sup> *Id.*

<sup>227</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

<sup>228</sup> See "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (2001).

<sup>229</sup> See 13 CFR 121.201, NAICS code 517212.

<sup>230</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>231</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued October 2000).

<sup>232</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have

gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>238</sup> The SBA has approved of this standard.<sup>239</sup> The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).<sup>240</sup> Of the 67 auction winners, 61 claimed status as 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 have gross revenues that are not more than \$40 million and are thus considered small entities.<sup>241</sup>

123. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,<sup>242</sup> which includes all such companies generating \$12.5 million or less in annual receipts.<sup>243</sup> According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.<sup>244</sup> Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.<sup>245</sup> Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

124. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small

entities.<sup>246</sup> There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

125. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually.<sup>247</sup> According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.<sup>248</sup> Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

126. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>249</sup> The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.<sup>250</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the

Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

127. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>251</sup> The Commission has determined that there are 67,700,000 subscribers in the United States.<sup>252</sup> Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>253</sup> Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.<sup>254</sup> The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>255</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 size standard contained in the Communications Act of 1934.

128. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.<sup>256</sup> The SBA has created a small business size standard for Cable and Other Program Distribution.<sup>257</sup> This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing

<sup>238</sup> 47 CFR 21.961(b)(1).

<sup>239</sup> See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of \$40 million size standard for MDS auction).

<sup>240</sup> Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

<sup>241</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. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 CFR 121.201, NAICS code 517910.

<sup>242</sup> 13 CFR 121.201, NAICS code 517510.

<sup>243</sup> Id.

<sup>244</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

<sup>245</sup> Id.

<sup>246</sup> In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

<sup>247</sup> 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

<sup>248</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513220 (issued October 2000).

<sup>249</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 (February 27, 1995).

<sup>250</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, February 29, 1996 (based on figures for December 30, 1995).

<sup>251</sup> 47 U.S.C. 543(m)(2).

<sup>252</sup> See FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice*, DA 01-158 (January 24, 2001).

<sup>253</sup> 47 CFR 76.901(f).

<sup>254</sup> See FCC Announces New Subscriber Count for the Definition of Small Cable Operators, *Public Notice*, DA-01-0158 (released January 24, 2001).

<sup>255</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

<sup>256</sup> See 47 U.S.C. 573.

<sup>257</sup> 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

service.<sup>258</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

129. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than \$12.5 million.<sup>259</sup> According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.<sup>260</sup> Of this total, 1,180 firms had annual receipts of \$10 million or less, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.<sup>261</sup> Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

130. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.<sup>262</sup> Accordingly, there are no licensees in this service.

131. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

132. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or

radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>263</sup> 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 in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million.<sup>264</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

133. *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 Personal Radio Services include spectrum licensed under part 95 of our rules.<sup>265</sup> These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-

Use Radio Service (MURS).<sup>266</sup> There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.<sup>267</sup> Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

134. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>268</sup>

<sup>266</sup> The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR part 95.

<sup>267</sup> 13 CFR 121.201, NAICS Code 517212.

<sup>268</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 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 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 approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 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 approximately 9,000 state and local governments are licensed to highway maintenance service to provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 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 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief

<sup>258</sup> See <http://www.fcc.gov/csb/ovs/csovsr.html> (current as of March 2002).

<sup>259</sup> 13 CFR 121.201, NAICS code 517510.

<sup>260</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4 (issued October 2000).

<sup>261</sup> *Id.*

<sup>262</sup> “Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004,” *Public Notice*, DA 03–2354 (August 28, 2003).

<sup>263</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>264</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

<sup>265</sup> 47 CFR part 90.



There are a total of approximately 127,540 licensees in these services. Governmental entities<sup>269</sup> as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>270</sup>

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

136. 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>271</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

organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

<sup>269</sup> 47 CFR 1.1162.

<sup>270</sup> 5 U.S.C. 601(5).

<sup>271</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.

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 records.

137. 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.

138. 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>272</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>273</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>274</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>275</sup>

139. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.<sup>276</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

<sup>272</sup> 47 CFR 1.1164.

<sup>273</sup> 47 CFR 1.1164(c).

<sup>274</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>275</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>276</sup> 47 CFR 1.1166.

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

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

140. 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 III of this FRFA, *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 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.

141. The *Omnibus Appropriations Act for FY 2004*, Public Law 108–199, requires the Commission to revise its Schedule of Regulatory Fees in order 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) 2004.<sup>277</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.

142. We have previously used cost accounting data for computation of regulatory fees, but 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 proposing in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting

<sup>277</sup> 47 U.S.C. 159(a).



costs to other services which, for the most part, are larger entities.

143. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See, e.g., footnote 271, *supra*.

#### Report to Small Business

**Administration:** The Commission will send a copy of this *Report and Order*, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**Report to Congress:** The Commission will send a copy of this Final Regulatory Flexibility Analysis (FRFA), along with this *Report and Order*, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

#### Attachment B—Sources of Payment Unit Estimates for FY 2004

In order to calculate individual service fees for FY 2004, we adjusted FY 2003 payment units for each service to

more accurately reflect expected FY 2004 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. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System. The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources

and, in all cases; we compared FY 2004 estimates with actual FY 2003 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 2004 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 2004 payment units are based on FY 2003 actual payment units, it does not necessarily mean that our FY 2004 projection is *exactly* the same number as FY 2003. It means that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, 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 Media Services Bureau estimates and actual FY 2003 payment units.
UHF/VHF Television Stations .....	Based on Media Services Bureau estimates and actual FY 2003 payment units.
AM/FM/TV Construction Permits .....	Based on Media Services Bureau estimates and actual FY 2003 payment units.
LPTV, Translators and Boosters .....	Based on actual FY 2003 payment units.
Broadcast Auxiliaries .....	Based on actual FY 2003 payment units.
MDS/LMDS/MMDS .....	Based on Wireless Telecommunications Bureau estimates and actual FY 2003 payment units.
Cable Television Relay Service (CARS) Stations.	Based on actual FY 2003 payment units.
Cable Television System Subscribers .....	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and actual FY 2003 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2003 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2004 revenue growth/decline for industry, and estimations by the Wireline Competition Bureau.
Earth Stations .....	Based on actual FY 2003 payment estimates and projected FY 2004 units.
Space Stations (GSOs & NGSOs) .....	Based on International Bureau licensee data base estimates.
International Bearer Circuits .....	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

#### ATTACHMENT C.—CALCULATION OF FY 2004 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2004 payment units	Years	FY 2003 revenue estimate	Pro-rated FY 2004 revenue requirement**	Computed new FY 2004 regulatory fee	Rounded new FY 2004 regulatory fee	Expected new FY 2004 revenue
PLMRS (exclusive use) .....	3,400	10	330,000	334,916	10	10	340,000
PLMRS (shared use) .....	46,000	10	2,665,000	2,704,697	6	5	2,300,000
Microwave .....	3,000	10	1,525,000	1,547,716	52	50	1,500,000
218–219 MHz (formerly IVDS) .....	3	10	1,500	1,522	51	50	1,500
Marine (ship) .....	3,900	10	660,000	669,831	17	15	585,000

## ATTACHMENT C.—CALCULATION OF FY 2004 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2004 payment units	Years	FY 2003 revenue estimate	Pro-rated FY 2004 revenue requirement**	Computed new FY 2004 regulatory fee	Rounded new FY 2004 regulatory fee	Expected new FY 2004 revenue
GMRS .....	15,000	5	265,000	268,947	4	5	375,000
Aviation (aircraft) ....	3,100	10	155,000	157,309	5	5	155,000
Marine (coast) .....	962	10	100,000	101,490	11	10	96,200
Aviation (ground) ....	1,600	5	127,500	129,399	16	15	120,000
Amateur vanity call signs .....	7,800	10	159,740	162,119	2.08	2.08	162,119
AM Class A .....	69	1	195,000	198,560	2,878	2,875	198,375
AM Class B .....	1,699	1	2,384,800	2,428,337	1,429	1,425	2,421,075
AM Class C .....	990	1	828,300	843,421	852	850	841,500
AM Class D .....	1,888	1	2,728,350	2,778,159	1,471	1,475	2,784,800
FM Classes A, B1 & C3 .....	3,220	1	5,544,000	5,701,258	1,771	1,775	5,715,500
FM Classes B, C, C0, C1 & C2 .....	3,022	1	6,875,050	7,056,607	2,335	2,325	7,026,150
AM construction permits .....	73	1	21,840	33,855	464	465	33,945
FM construction permits .....	162	1	373,700	268,430	1,657	1,650	267,300
Satellite TV .....	122	1	126,000	129,369	1,060	1,050	128,100
Satellite TV construction permit ...	3	1	2,575	1,553	518	520	1,560
VHF markets 1–10 .....	43	1	2,536,600	2,595,946	60,371	60,375	2,596,125
VHF markets 11–25 .....	64	1	2,593,500	2,653,885	41,467	41,475	2,654,400
VHF markets 26–50 .....	77	1	2,199,125	2,246,372	29,174	29,175	2,246,475
VHF markets 51–100 .....	123	1	2,114,775	2,160,482	17,565	17,575	2,161,725
VHF remaining markets .....	235	1	930,050	954,129	4,060	4,050	951,750
VHF construction permits .....	6	1	74,000	27,974	4,662	4,650	27,900
UHF markets 1–10 .....	90	1	1,521,600	1,600,803	17,787	17,775	1,599,750
UHF markets 11–25 .....	81	1	1,236,000	1,309,989	16,173	16,175	1,310,175
UHF markets 26–50 .....	117	1	1,041,675	1,088,742	9,305	9,300	1,088,100
UHF markets 51–100 .....	170	1	900,475	944,964	5,559	5,550	943,500
UHF remaining markets .....	183	1	270,750	303,743	1,660	1,650	301,950
UHF construction permits .....	34	1	373,500	193,319	5,686	5,675	192,950
Broadcast auxiliaries .....	25,000	1	250,000	254,564	10	10	250,000
LPTV/translators/boosters .....	2,900	1	1,092,445	1,112,389	384	385	1,116,500
CARS stations .....	1,000	1	130,500	132,882	133	135	135,000
Cable television systems .....	65,000,000	1	44,550,000	45,363,307	0.70	0.70	45,500,000
Interstate telecommunication service providers	58,500,000,000	1	125,370,000	127,658,761	0.0021822	0.00218	127,530,000
CMRS mobile services (cellular/public mobile) .....	153,000,000	1	36,868,000	38,695,143	0.253	0.25	38,250,000
CMRS messaging services .....	14,500,000	1	1,576,000	1,160,693	0.08	0.08	1,160,000
MDS/MMDS .....	1,600	1	956,915	434,894	272	270	432,000
LMDS .....	340	1	258,375	92,582	272	270	91,800
International bearer circuits .....	2,800,000	1	6,942,000	7,068,733	2.52	2.52	7,056,000
International public fixed .....	1	1	1,725	1,756	1,756	1,750	1,750
Earth stations .....	3,400	1	661,290	673,363	198	200	680,000
International HF broadcast .....	5	1	3,650	3,717	743	745	3,725
Space stations (geostationary) ....	77	1	8,671,875	8,830,189	114,678	114,675	8,829,975

## ATTACHMENT C.—CALCULATION OF FY 2004 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2004 payment units	Years	FY 2003 revenue estimate	Pro-rated FY 2004 revenue requirement**	Computed new FY 2004 regulatory fee	Rounded new FY 2004 regulatory fee	Expected new FY 2004 revenue
Space stations (non-geo-stationary) .....	5	1	758,625	657,000	131,400	131,400	657,000
Total estimated revenue to be collected .....			268,951,805	273,737,819			272,821,674
Total revenue requirement .....				272,958,000			272,958,000
Difference .....				779,819			(136,326)

\*\*1.01471 factor applied based on the amount Congress designated for recovery through regulatory fees (Pub. L. 108-7 and 47 U.S.C. 159(a)(2)).

## ATTACHMENT D.—FY 2004 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the first eleven categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	10
Microwave (per license) (47 CFR part 101) .....	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	50
Marine (Ship) (per station) (47 CFR part 80) .....	15
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) .....	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.25
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Multipoint Distribution Services (MMDS/MDS) (per call sign) (47 CFR part 21) .....	270
Local Multipoint Distribution Service (per call sign) (47 CFR part 101) .....	270
AM Radio Construction Permits .....	465
FM Radio Construction Permits .....	1,650
TV (47 CFR part 73) VHF Commercial:	
Markets 1-10 .....	60,375
Markets 11-25 .....	41,475
Markets 26-50 .....	29,175
Markets 51-100 .....	17,575
Remaining Markets .....	4,050
Construction Permits .....	4,650
TV (47 CFR part 73) UHF Commercial:	
Markets 1-10 .....	17,775
Markets 11-25 .....	16,175
Markets 26-50 .....	9,300
Markets 51-100 .....	5,550
Remaining Markets .....	1,650
Construction Permits .....	5,675
Satellite Television Stations (All Markets) .....	1,050
Construction Permits—Satellite Television Stations .....	520
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) .....	385
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	135
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.70
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00218
Earth Stations (47 CFR part 25) .....	200
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) .....	114,675
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	131,400
International Bearer Circuits (per active 64KB circuit) .....	2.52
International Public Fixed (per call sign) (47 CFR part 23) .....	1,750
International (HF) Broadcast (47 CFR part 73) .....	745

**FY 2004 Schedule of Regulatory Fees  
(Continued)**
**FY 2004 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, C0, C1 & C2
≤25,000 .....	600	450	350	425	525	675
25,001–75,000 .....	1,200	900	525	625	1,050	1,175
75,001–150,000 .....	1,800	1,125	700	1,075	1,450	2,200
150,001–500,000 .....	2,700	1,925	1,050	1,275	2,225	2,875
500,001–1,200,000 .....	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001–3,000,000 .....	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000 .....	7,200	5,400	3,325	4,250	7,350	8,775

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

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (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 sections 73.150 and 73.152 of the Commission's rules.<sup>278</sup> Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3<sup>279</sup>. 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 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population

counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

**FM Stations**

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 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 Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>280</sup> The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 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.

**Attachment F**
**Parties Filing Comments on the Notice  
of Proposed Rulemaking**

Chris Kidd  
XO Communications, Inc. ("XO")  
National Cable & Telecommunications  
Association ("NCTA")  
Cingular Wireless LLC ("Cingular")  
Rural Cellular Association ("RCA")  
New Operating Globalstar LLC  
("Globalstar")  
Cellular Telecommunications and  
Internet Association ("CTIA")  
Tyco Communications (US) Inc.  
("Tyco")  
American Cable Association ("ACA")  
Kenneth J. Brown

**Parties Filing Reply Comments**

FLAG Telecom Group Limited  
("FLAG")  
Rural Telecommunications Group, Inc.  
("RTG")  
Verizon Wireless ("Verizon")  
Space Imaging LLC ("Space Imaging")  
ORBCOMM LLC & ORBCOMM License  
Corp. ("ORBCOMM")  
Verizon ("Verizon")  
The Satellite Industry Association  
("SIA")  
Dobson Communications Corporation  
("Dobson")

**ATTACHMENT G.—FY 2003 SCHEDULE OF REGULATORY FEES**

Fee category	Annual regu- latory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	10
Microwave (per license) (47 CFR part 101) .....	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	30
Marine (Ship) (per station) (47 CFR part 80) .....	15

<sup>278</sup> 47 CFR 73.150 and 73.152.

<sup>279</sup> See *Map of Estimated Effective Ground Conductivity in the United States*, 47 CFR 73.190 Figure R3.

<sup>280</sup> 47 CFR 73.313.

## ATTACHMENT G.—FY 2003 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. \$'s)
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) .....	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Multipoint Distribution Services (MMDS/MDS) (per call sign) (47 CFR part 21) .....	265
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) .....	265
AM Radio Construction Permits .....	455
FM Radio Construction Permits .....	1,850
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	57,650
Markets 11–25 .....	43,225
Markets 26–50 .....	30,125
Markets 51–100 .....	18,075
Remaining Markets .....	4,450
Construction Permits .....	4,625
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	15,850
Markets 11–25 .....	12,875
Markets 26–50 .....	8,075
Markets 51–100 .....	4,975
Remaining Markets .....	1,425
Construction Permits .....	8,300
Satellite Television Stations (All Markets) .....	1,000
Construction Permits—Satellite Television Stations .....	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) .....	365
Broadcast Auxiliary (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	90
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.66
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00199
Earth Stations (47 CFR part 25) .....	210
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) .....	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	108,375
International Bearer Circuits (per active 64KB circuit) .....	2.67
International Public Fixed (per call sign) (47 CFR part 23) .....	1,725
International (HF) Broadcast (47 CFR part 73) .....	730

## FY 2003 Schedule of Regulatory Fees

## FY 2003 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, C0, C1 & C2
≤25,000 .....	600	450	325	400	475	625
25,001–75,000 .....	1,200	900	475	600	950	1,100
75,001–150,000 .....	1,800	1,125	650	1,000	1,300	2,025
150,001–500,000 .....	2,700	1,925	975	1,200	2,025	2,650
500,001–1,200,000 .....	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001–3,000,000 .....	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000 .....	7,200	5,400	3,100	4,000	6,650	8,125

Concurring Statement of Commissioner  
Michael CoppsRe: Assessment and Collection of  
Regulatory Fees for Fiscal Year 2004

I respectfully concur in today's decision. This year the Commission again relies on across-the-board

proportionate increases from the previous year's schedule of fees. I am concerned that the Commission does not address when or how it would adjust the regulatory fees pursuant to section 9(b)(3) of the Act. I recognize the difficulty the Commission has had in

developing a cost accounting system to be used in connection with regulatory fees. Nevertheless, as technology advances and our regulatory activities change, we must continue to look for ways to improve our regulatory fee methodology to ensure that we continue

to comply fully with the Act's requirements.

**Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2004; MD Docket No. 04-73*

Last year, I provided in detail a number of concerns with the methodology used by the Commission in determining regulatory fees. I appreciate the efforts in this item to respond to some of the problems that I raised at that time and the item's candor in assessing the Commission's difficulties in implementing a more granular cost-based accounting system. I also want to thank the staff of the Office

of General Counsel and the Office of the Managing Director for their continued dialogue on these complicated issues.

Implementation of section 9 of the Act raises a number of challenges for the Commission in that it allows for both cost-based and benefits-based adjustments but puts in place criteria for certain changes to the regulatory fee schedule. Clearly, the Commission does have some discretion in making adjustments to the fees, and the Commission is free to depart from strictly cost-based fees. However, I can only concur to certain portions of the Report and Order because I remain concerned about the impracticality of the Commission considering significant changes that undoubtedly occur from time to time in the costs of regulatory fees for individual services.

**Rule Changes**

■ Part 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

■ 2. Section 1.1152 is revised to read as follows:

**§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.**

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90):		
(a) New, Renew/Mod (FCC 601 & 159) .....	\$10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
220 MHz Nationwide:		
(a) New, Renew/Mod (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358130 Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
3. 218-219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
4. Shared Use Services:		
Land Mobile (Frequencies)		
Below 470 MHz—except 220 MHz:		
(a) New, Renew/Mod (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
General Mobile Radio Service:		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Rural Radio (Part 22):		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Marine Coast:		
(a) New Renewal/Mod (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) Renewal only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(c) Renewal only (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Aviation Ground:		
(a) New, Renewal/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) Renewal only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(c) Renewal only (Electronic Filing) (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Marine Ship:		
(a) New, Renewal/Mod (FCC 605 & 159) .....	15.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159) ....	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal only (FCC 605 & 159) .....	15.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
(d) Renewal only (Electronic Filing) (FCC 605 & 159) .....	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Aviation Aircraft:		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251-5994.
(c) Renewal only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251-5245.
(d) Renewal only (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251-5994.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (FCC 605 & 159) .....	2.08	FCC, P.O. Box 358130, Pittsburgh, PA, 15251-5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159) .....	2.08	FCC, P.O. Box 358994, Pittsburgh, PA, 15251-5994.
6. CMRS Mobile Services (per unit):		
(FCC 159) .....	<sup>2</sup> .25	FCC, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
7. CMRS Messaging Services (per unit):		
(FCC 159) .....	<sup>3</sup> .08	FCC, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
8. Multipoint Distribution:		
(Includes MMDS and MDS) .....	270	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
9. Local Multipoint Distribution Service:		
(Includes MMDS and MDS) .....	270	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251-5835.

<sup>1</sup> Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

<sup>2</sup> These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

<sup>3</sup> These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
1. <i>AM Class A</i>		
≤25,000 population .....	\$600	FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
25,001-75,000 population .....	1,200	
75,001-150,000 population .....	1,800	
150,001-500,000 population .....	2,700	
500,001-1,200,000 population .....	3,900	
1,200,001-3,000,000 population .....	6,000	
>3,000,000 population .....	7,200	
2. <i>AM Class B</i>		
≤25,000 population .....	450	
25,001-75,000 population .....	900	
75,001-150,000 population .....	1,125	
150,001-500,000 population .....	1,925	
500,001-1,200,000 population .....	2,925	
1,200,001-3,000,000 population .....	4,500	
>3,000,000 population .....	5,400	
3. <i>AM Class C</i>		
≤25,000 population .....	350	
25,001-75,000 population .....	525	
75,001-150,000 population .....	700	
150,001-500,000 population .....	1,050	
500,001-1,200,000 population .....	1,750	
1,200,001-3,000,000 population .....	2,625	
>3,000,000 population .....	3,325	
4. <i>AM Class D</i>		
≤25,000 population .....	425	
25,001-75,000 population .....	625	
75,001-150,000 population .....	1,075	
150,001-500,000 population .....	1,275	
500,001-1,200,000 population .....	2,125	
1,200,001-3,000,000 population .....	3,400	
>3,000,000 population .....	4,250	
5. AM Construction Permit	465	



Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
<b>6. FM Classes A, B1 and C3</b>		
≤25,000 population .....	525	
25,001–75,000 population .....	1,050	
75,001–150,000 population .....	1,450	
150,001–500,000 population .....	2,225	
500,001–1,200,000 population .....	3,550	
1,200,001–3,000,000 population .....	5,775	
>3,000,000 population .....	7,350	
<b>7. FM Classes B, C, C0, C1 and C2</b>		
≤25,000 population .....	675	
25,001–75,000 population .....	1,175	
75,001–150,000 population .....	2,200	
150,001–500,000 population .....	2,875	
500,001–1,200,000 population .....	4,225	
1,200,001–3,000,000 population .....	6,750	
>3,000,000 population .....	8,775	
<b>8. FM Construction Permits</b>	1,650	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10 .....	60,375	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25 .....	41,475	
3. Markets 26 thru 50 .....	29,175	
4. Markets 51 thru 100 .....	17,575	
5. Remaining Markets .....	4,050	
6. Construction Permits .....	4,650	
UHF Commercial		
1. Markets 1 thru 10 .....	17,775	FCC, UHFCommercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25 .....	16,175	
3. Markets 26 thru 50 .....	9,300	
4. Markets 51 thru 100 .....	5,550	
5. Remaining Markets .....	1,650	
6. Construction Permits .....	5,675	
Satellite UHF/VHF Commercial		
1. All Markets .....	1,050	FCC, Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits .....	520	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74)		
	385	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary		
	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.

<sup>1</sup> Note that “small fees” are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 4. Section 1.1154 is revised to read as follows:

**§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.**

Radio facilities	Fee amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	\$50.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Carriers:		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A)).	.00218	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

<sup>1</sup> Note that “small fees” are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 5. Section 1.1155 is revised to read as follows:

**§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.**

	Fee amount	Address
1. Cable Television Relay Service .....	\$135	FCC, Cable P.O. Box 358835 Pittsburgh, PA 15251-5835.
2. Cable TV System (per subscriber) .....	.70	

<sup>1</sup> Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 6. Section 1.1156 is revised to read as follows:

**§ 1.1156 Schedule of regulatory fees and filing locations for international services.**

Radio facilities	Fee amount	Address
1. International (HF) Broadcast .....	\$745	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
2. International Public Fixed .....	1,750	FCC, International P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Space Stations (Geostationary Orbit) .....	114,675	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Space Stations (Non-Geostationary Orbit) .....	131,400	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Earth Stations Transmit/Receive & Transmit Only (per authorization or registration).	200	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251-5835.
Carriers International Bearer Circuits (per active 64KB circuit or equivalent).	2.52	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251-5835.

<sup>1</sup> Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

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