

Authorization Coordinator (6PD-O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-6444; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Alima Patterson (214) 665-8533.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 25, 2007.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 07-4000 Filed 8-15-07; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket No. 07-81; FCC 07-140]

### Assessment and Collection of Regulatory Fees for Fiscal Year 2007

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we seek comment on proposed changes to the section 9 regulatory fee structure for Broadband Radio Service (BRS).

**DATES:** Comments are due September 17, 2007, and reply comments are due October 15, 2007.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 07-81, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include MD Docket No. 07-81 in the subject line of the message.

- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express

Mail, and Priority Mail), must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

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

**FOR FURTHER INFORMATION CONTACT:**

Roland Helvajian, Office of Managing Director at (202) 418-0444 or Rob Fream, Office of Managing Director at (202) 418-0408.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-140, adopted on August 2, 2007 and released on August 6, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at <http://www.fcc.gov>.

Pursuant to §§ 1.1206(b), 1.1202 and 1.1203 of the Commission's rules, CFR 1.1206(b), 1.1202, 1.1203, this is as a "permit-but-disclose" proceeding. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>1</sup> Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking

Portal, or (3) procedures for filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), 13 FCC Rcd 11322 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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

<sup>1</sup> See 47 CFR 1.1206(b)(2).

• *People with Disabilities*: To request information in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Summary of Further Notice of Proposed Rulemaking

1. In WT Docket No. 03-66 (the *BRS/EBS Proceeding*), the Commission sought comment on proposed changes to the regulatory fee structure for BRS.<sup>2</sup> In 2006, the Commission adopted a new regulatory fee structure for BRS (the *2006 Decision*).<sup>3</sup> Specifically, as noted in the *FY 2007 NPRM*, the Commission adopted a megahertz-based approach for BRS regulatory fees and, using a concept similar to the Commission's annual scale of regulatory fees for broadcast television stations, established in the *2006 Decision* three rate tiers based on the BTA ranking of each license.<sup>4</sup>

2. In the *FY 2007 NPRM*, we sought comment on the implementation of the new BRS fee structure. Specifically, we invited commenters to suggest a simple method of calculating BRS regulatory fees that incorporates the complexity of using both elements of the *2006 Decision*, namely, the three rate tiers, to be based on the BTA ranking of each license, and the per megahertz fee. In particular, we invited comment on a formula or method for calculating regulatory fees that incorporates the *2006 Decision* in a manner "sensitive to rural operators in less densely populated areas."<sup>5</sup> WCA, the only commenter addressing this issue, does not object to the Commission seeking

comment on the methodology to use in fees BRS.<sup>6</sup>

3. We clarify that our questions about BRS regulatory fees in the *FY 2007 NPRM* as well in this Further Notice are to implement the *2006 Decision*, and not to revisit the three-tier approach adopted in the *2006 Decision*.

4. Briefly, under the *2006 Decision*, BRS regulatory fees will use a MHz-based formula with three tiers of fees by markets. Instead of a flat fee amount per BRS license, BRS licensees will pay a fee in one of three fee categories based on Basic Trading Areas ("BTA") ranked by population size.<sup>7</sup> The highest fee will be assessed to licenses in BTAs ranked 1-60, licenses in BTAs ranked 61-200 will have a lesser fee, and licenses for BTAs ranked 201-493 will pay the lowest fee.<sup>8</sup> Although the revised framework for assessing BRS regulatory fees was adopted in the *2006 Decision*, the implementation of this new formula will require us to specify how each of the three BTA tiers should be weighted (in terms of fee amounts) relative to the others. We propose to use a weighted average approach based on the *2006 Decision* to establish three tiers of regulatory fees using a 3:2:1 ratio, *i.e.*, 3x for Tier 1, 2x for Tier 2, and 1x for Tier 3, where x equals the base fee amount (Pro-rated FY Revenue Requirement for BRS divided by the weighted total number of BRS payment units). In adopting three fee tiers for BRS, the Commission considered that BTAs ranked 1-60 generally have a population of greater than one million, BTAs ranked 61-200 generally have population of 250,000 to one million, and BTAs ranked 201-493 have a population of less than 250,000.<sup>9</sup> The Commission also concluded that the current methodology for assessing regulatory fees for BRS is particularly onerous for rural operators.<sup>10</sup> We seek comment on our proposal and specifically invite commenters to address whether it accurately implements the tiered approach adopted in the *2006 Decision*.

5. The second element of the *2006 Decision* involves setting a fee per megahertz of licensed BRS spectrum. However, throughout the nation, BTA-by-BTA, the BRS radio service and its licensees are in the midst of a multi-year transition to a new band plan that, among other things, is modifying the amount of spectrum designated and

licensed for BRS.<sup>11</sup> Given the complexities associated with this "moving target," we tentatively conclude that the public interest would be best served by implementing the fee per megahertz approach after the BRS transition concludes nationwide. We seek comment on this tentative conclusion.

### Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act ("RFA"),<sup>12</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules in this Further Notice of Proposed Rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated herein. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>13</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>14</sup>

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

7. On April 12, 2006, the Commission adopted a number of changes in the rules governing the 2500-2690 MHz band, for the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS").<sup>15</sup> Among other things, the Commission adopted a megahertz ("MHz")-based formula for BRS licensees with tiered regulatory fees

<sup>11</sup> The transition plan creates a process for relocating Educational Broadband Service ("EBS") licensees and BRS licensees from their current channel locations to their new spectrum blocks in the Lower Band Segment ("LBS"), Middle band Segment ("MBS"), or Upper Band Segment ("UBS"). The transition occurs by BTA and is undertaken by a proponent or multiple proponents. A proponent(s) must pay the cost of transitioning EBS licensees. The transition occurs in the following three phases: the Initiation Phase, the Transition Planning Phase, and the Transition Completion Phase.

<sup>12</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 No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

<sup>13</sup> 5 U.S.C. 603(a).

<sup>14</sup> *Id.*

<sup>15</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, paras. 367-376 (2006) ("2006 Decision").

<sup>2</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14296, para. 357 ("BRS/EBS Report and Order and FNPRM").

<sup>3</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, paras. 367-376 (2006) ("2006 Decision").

<sup>4</sup> See *FY 2007 NPRM*, 22 FCC Rcd at 7978, para. 8 n.8, citing *The 2006 Decision*. The three tiers are based on three categories of Basic Trading Areas ("BTA") population rankings: BTAs 1-60, BTAs 61-200, and BTAs 201-493. For BRS licensees that are licensed by geographic licensed service area (GSA), the BTA is the geographic center point of where its GSA is located. See *The 2006 Decision*, 21 FCC Rcd at 5759, para. 376.

<sup>5</sup> *FY 2007 NPRM*, 22 FCC Rcd at 7978, para. 8.

<sup>6</sup> WCA Comments at 1-2.

<sup>7</sup> See *The 2006 Decision*, 21 FCC Rcd at 5759, para. 376.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, 21 FCC Rcd at 5759, n. 947.

<sup>10</sup> *Id.*, 21 FCC Rcd at 5758, para. 374.

based on market size. The FNPRM seeks comment on a new regulatory fee schedule for BRS, based on the tiered structure set forth in *The 2006 Decision*.

## II. Legal Basis

8. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended ("the Act").<sup>16</sup>

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

9. 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.<sup>17</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>18</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>19</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>20</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>21</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>22</sup> 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>23</sup> The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>24</sup> Census Bureau data for

2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>25</sup> We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."<sup>26</sup> Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our regulatory fee proceeding.

10. BRS, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the BRS and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).<sup>27</sup> In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>28</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.<sup>29</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently

approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by this regulatory fee proceeding.

11. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts.<sup>30</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>31</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>32</sup> Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the regulatory fee decisions we will reach in this proceeding. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>33</sup> Thus, we estimate that at least 1,932 licensees are small businesses. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees.

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

12. 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 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.<sup>34</sup> Interstate telephone service

<sup>25</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

<sup>26</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>27</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, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>28</sup> 47 CFR 21.961(b)(1).

<sup>29</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 Act. 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

<sup>30</sup> 13 CFR 121.201, NAICS code 517510.

<sup>31</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued Nov. 2005).

<sup>32</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>33</sup> The term "small entity" within 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 EBS licensees.

<sup>34</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)

<sup>16</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>17</sup> 5 U.S.C. 603(b)(3).

<sup>18</sup> 5 U.S.C. 601(6).

<sup>19</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." 5 U.S.C. 601(3).

<sup>20</sup> 15 U.S.C. 632.

<sup>21</sup> 5 U.S.C. 601(4).

<sup>22</sup> Independent Sector, the New Nonprofit Almanac & Desk Reference (2002).

<sup>23</sup> 5 U.S.C. 601(5).

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

providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

13. 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.

14. BRS licensees currently are subject to the Commission's regulatory fees. This FNPRM seeks comment on how to revise the current regulatory fee schedule to comply with the tiered regulatory fee schedule required by the Commission in the *BRS/EBS Second Report and Order*. As a consequence of any new regulatory fee structures adopted in this proceeding, BRS licensees may have to provide additional information than they have

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 Educational Broadband Service (EBS) (previously referred to as 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.

provided in the past and the regulatory fee schedule for these licensees will be modified.

15. 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>35</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>36</sup> Further, in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 104–134, 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>37</sup> Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the DCIA. 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>38</sup>

16. 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>39</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the 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

17. 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.<sup>40</sup>

18. The Commission is obligated to collect regulatory fees each fiscal year to fund the Commission's operations. For example, the Omnibus Appropriations Act for FY 2007, Public Law 109–383, 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 Act, has required the Commission to collect for FY 2007.<sup>41</sup> With respect to BRS licensees, we are required to implement a tiered regulatory fee schedule based on market size and bandwidth. For this reason, we are seeking comment on an appropriate regulatory fee schedule for these licensees, to be implemented in the next fiscal year. Such a fee structure, when adopted, should result in a lower regulatory fee burden for smaller licensees, based on the licensees' market size and bandwidth.

19. We also note that the Commission's rules provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.<sup>42</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

20. None.

21. Accordingly, *it is ordered* pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Further

<sup>35</sup> 47 CFR 1.1164.

<sup>36</sup> 47 CFR 1.1164(c).

<sup>37</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>38</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>39</sup> 47 CFR 1.1166.

<sup>40</sup> 5 U.S.C. 603.

<sup>41</sup> 47 U.S.C. 159(a).

<sup>42</sup> 47 CFR 1.1166.

Notice of Proposed Rulemaking is hereby adopted.

22. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-15606 Filed 8-15-07; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 15, 73, 74, and 76

[MB Docket No. 07-148; FCC 07-128]

#### DTV Consumer Education Initiative

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to require broadcasters, multichannel video programming distributors, retailers, and manufacturers to take steps to publicize the DTV transition. These would include public service announcements by broadcasters, including notices in cable, satellite, and other MVPD bills, notices from consumer electronics manufacturers, employee training by retailers, and adjustments to the DTV.gov Partners program. Because of the importance of making the benefits of the Digital Television transition understandable and available to the public, the Commission seeks comment generally on the best means of creating a coordinated, national DTV consumer education campaign.

**DATES:** Comments for this proceeding are due on or before September 17, 2007; reply comments are due on or before October 1, 2007.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 07-148, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,

CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

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

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact *Eloise Gore*, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), or *Lyle Elder*, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 07-128, adopted on July 21, 2007, and released on July 30, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### I. Introduction

1. In this Notice of Proposed Rulemaking, we seek public comment on several proposals relating to consumer education about the digital television ("DTV") transition. From the beginning of the transition of the nation's broadcast television service from analog to digital television service, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrum available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer

understanding of the benefits and mechanics of the transition. The Congressional decision to establish a hard deadline of February 17, 2009, for the end of full-power analog broadcasting has made consumer awareness even more critical.

2. While the Commission has been engaged in various DTV outreach efforts, we seek comment on whether there are additional steps which we can and should take. Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, recently wrote to the Commission to express interest in the pace and scope of consumer education about the transition. As the Congressmen observed, "the Commission is particularly well suited to lead this effort given its existing expertise and resources." Noting the particular dangers of insufficient outreach to certain communities, they proposed a number of specific actions that they believe the Commission should take. This notice requests comment on the Commission's authority to take these actions and invites discussion of their benefits and any other measures we could take to facilitate the transition.

#### II. Discussion

3. The Letter suggests that, as a general matter, "the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign." We agree that we should take whatever steps we can to promote a coordinated, national DTV consumer education campaign and seek comment on the best means of achieving that goal. In particular, we seek comment on the potential Commission initiatives raised by Representatives Dingell and Markey. For each potential initiative, we particularly seek comment on: (1) The Commission's authority to implement the proposal; (2) the likely effectiveness of the proposal (*i.e.*, whether it would appreciably increase public awareness and understanding of the DTV transition); (3) the best methods of implementation; (4) the policy implications; and (5) constitutional concerns, if any.

##### *A. Broadcaster Public Service Announcements and Other Consumer Education Requirements*

4. The Letter suggests that the Commission consider using its regulatory authority to "require television broadcasters to air periodic