

required to complete a consultation under DOI's tribal consultation policy.

#### *Paperwork Reduction Act*

This direct final rule does not contain any information collection requirements, and does not require a submission to OIRA under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D: "(i) Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature." We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. This rule will not alter in any material way natural resource exploration, production, or transportation.

#### *Information Quality Act*

In accordance with the Information Quality Act, DOI has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at [http://www.doi.gov/ocio/information\\_management/iq.cfm](http://www.doi.gov/ocio/information_management/iq.cfm).

#### *Effects on the Energy Supply (E.O. 13211)*

This direct final rule is not a significant energy action under the definition in E.O. 13211, and therefore, does not require a Statement of Energy Effects.

#### **List of Subjects in 30 CFR Part 1218**

Continental shelf, Electronic funds transfers, Geothermal energy, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Service of official correspondence.

Dated: August 15, 2013.

**Rhea Suh,**

*Assistant Secretary, Policy, Management and Budget.*

#### **Authority and Issuance**

For the reasons discussed in the preamble, under the authority provided by the Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and Secretarial Order No. 3306, ONRR amends part 1218 of title 30 CFR, chapter XII, subchapter A, as follows:

#### **PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT**

■ 1. The authority citation for part 1218 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

■ 2. Amend § 1218.540 to revise paragraphs (a) and (d) to read as follows:

#### **§ 1218.540 How does ONRR serve official correspondence?**

\* \* \* \* \*

(a) *Method of service.* ONRR will serve all official correspondence to the addressee of record by one of the following methods:

- (1) U.S. Postal Service mail;
- (2) Personal delivery made pursuant to the law of the State in which the service is effected;
- (3) Private mailing service (e.g., United Parcel Service, or Federal Express), with signature and date upon delivery, acknowledging the addressee of record's receipt of the official correspondence document; or

(4) Any electronic method of delivery that keeps information secure and provides for a receipt of delivery or, if there is no receipt, the date of delivery otherwise documented.

\* \* \* \* \*

(d) *Constructive service.* If we cannot make delivery to the addressee of record after making a reasonable effort, we deem official correspondence as constructively served 7 days after the date that we mail or electronically transmit the document. This provision covers situations such as those where no delivery occurs because:

- (1) The addressee of record has moved without filing a forwarding address or updating its Form ONRR-4444 as required under paragraph (b) of this section;
- (2) The forwarding order has expired;
- (3) The addressee of record has changed its email address without

updating its Form ONRR-4444 as required under paragraph (b) of this section;

(4) Delivery was expressly refused; or  
(5) The document was unclaimed and the attempt to deliver is substantiated by either:

- (i) The U.S. Postal Service;
- (ii) A private mailing service, as described in this section;
- (iii) The person who attempted to make delivery using some other method of service; or

(iv) A receipt or other documentation that ONRR attempted electronic service.  
[FR Doc. 2013-20634 Filed 8-22-13; 8:45 am]

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#### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 1**

[MD Docket No. 13-140; MD Docket No. 12-201; MD Docket No. 08-65; FCC 13-110]

#### **Assessment and Collection of Regulatory Fees for Fiscal Year 2013**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission revises its Schedule of Regulatory Fees to recover an amount of \$339,844,000 that Congress has required the Commission to collect for fiscal year 2013. 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 23, 2013. Payment of regulatory fees is due September 20, 2013.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (R&O), FCC 13-140, MD Docket No. 12-201; MD Docket No. 08-65; FCC 13-110, adopted on August 8, 2013 and released on August 12, 2013.

#### **I. Procedural Matters**

##### *A. Final Paperwork Reduction Act of 1995 Analysis*

1. This *Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain

any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

**B. Congressional Review Act Analysis**

2. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C 801(a)(1)(A).<sup>1</sup>

**C. Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act of 1980 (“RFA”),<sup>2</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this *Report and Order*. The FRFA is set forth in the section entitled Final Regulatory Flexibility Analysis.

**II. Introduction**

3. This *Report and Order* concludes the rulemaking proceeding initiated to collect \$339,844,000 in regulatory fees for Fiscal Year (FY) 2013, pursuant to

section 9 of the Communications Act of 1934, as amended (the Act or Communications Act)<sup>3</sup> and the FY 2013 Further Continuing Appropriations Act.<sup>4</sup> These regulatory fees are due in September 2013.

4. In addition to proposing the FY 2013 regulatory fees, the *FY 2013 NPRM*<sup>5</sup> (78 FR 34612, June 10, 2013) requested comment (*see* Table 1 below) on a number of proposals to revise the regulatory fee program to more accurately reflect the regulatory activities of current Commission full time employees (FTEs).<sup>6</sup>

TABLE 1—LIST OF COMMENTERS

Commenter	Abbreviation
<b>Initial Comments</b>	
American Cable Association .....	ACA.
AT&T Services, Inc. ....	AT&T.
Competitive Carriers Association .....	CCA.
Critical Messaging Association .....	CMA.
DIRECTV, LLC .....	DIRECTV.
CTIA—The Wireless Association® .....	CTIA.
EchoStar Satellite Operating Company and Hughes Network Systems, LLC and DISH Network LLC .....	EchoStar and DISH.
Fireweed Communications LLC and Jeremy Lansman .....	Fireweed.
International Carrier Coalition .....	ICC.
Intelsat License LLC .....	Intelsat.
Independent Telephone & Telecommunications Alliance .....	ITTA.
Minority Media and Telecommunications Council .....	MMTC.
National Association of Broadcasters .....	NAB.
North American Submarine Cable Association .....	NASCA.
SES Americom, Inc., Inmarsat, Inc., and Telesat Canada .....	SES.
Satellite Industry Association .....	SIA.
Sarkes Tarzian, Inc. and Sky Television, LLC .....	Sarkes Tarzian and Sky Television.
Telesat Canada .....	Telesat.
Telstra Incorporated and Australia-Japan Cable (Guam) Limited .....	Telstra.
United States Telecom Association .....	USTA.
Martin D. Wade .....	Martin D. Wade.
<b>Reply Comments</b>	
American Cable Association .....	ACA.
Arkansas Broadcasters Association and Christian Broadcasting System, LTD .....	ABA.
Clearwire Corporation .....	Clearwire.
CTIA—The Wireless Association® .....	CTIA.
DIRECTV, LLC .....	DIRECTV.
EchoStar Satellite Operating Company and Hughes Network Systems, LLC and DISH Network LLC .....	EchoStar and DISH.
Google Fiber Inc. ....	Google.
International Carrier Coalition .....	ICC.
P. Randall Knowles .....	Knowles.

<sup>1</sup> *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

<sup>2</sup> *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

<sup>3</sup> *Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in MD Docket Nos. 12–201, 13–140, and 08–05, 28 FCC Rcd 7790 (2013) (*FY 2013 NPRM*). Section 9 regulatory fees are mandated by Congress and collected to recover the

regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities. 47 U.S.C. 159(a).

<sup>4</sup> In FY 2013, the Consolidated and Further Continuing Appropriations Act, Public Law 113–6 (2013) at Division F authorizes the Commission to collect offsetting regulatory fees at the level provided to the Commission’s FY 2012 appropriation of \$339,844,000. *See* Financial Services and General Government Appropriations Act, 2012, Division C of Public Law 112–74, 125 Stat. 108–9 (2011). The sequester effectuated by the Budget Control Act of 2011, Public Law 112–15, 101, 125 Stat. 241 (2011) reduced the Commission’s budget for salary and expenses to \$322,747,807. *See* Budget Control Act of 2011, Public Law 112–15, 101, 125 Stat. 241 (2011) (amending 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99–177, 99 Stat. 1037 (2005).

However, the Budget Control Act does not alter the congressional directive set out in the Further Continuing Appropriations Act to collect \$339,844,000 in regulatory fees for FY 2013.

<sup>5</sup> Table 1 contains a list of commenters and their abbreviated names. We have used the same abbreviations in referring to those commenters where we discuss previous comments filed by the same parties. Where previous comments are cited we have added the date of the filing to clarify that the comment was filed to an earlier notice of proposed rulemaking.

<sup>6</sup> One FTE, a “Full Time Equivalent” or “Full Time Employee,” is a unit of measure equal to the work performed annually by a full time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget.

TABLE 1—LIST OF COMMENTERS—Continued

Commenter	Abbreviation
Bennett Z. Kobb	Kobb.
National Cable & Telecommunications Association	NCTA.
Satellite Industry Association	SIA.
SES Americom, Inc., Inmarsat, Inc., and Telesat Canada	SES.
Verizon and Verizon Wireless	Verizon.

5. In this *Report and Order* we look to current data to determine the number of FTEs working on regulation and oversight of Interstate Telecommunications Service Providers (ITSPs)<sup>7</sup> and other fee categories and revise the calculation of direct FTEs in the International Bureau. We also adopt a 7.5 percent limit to any increase in regulatory fee assessments to industry segments resulting from such reallocation of FTEs based on current data.<sup>8</sup> We will require Digital Low Power, Class A, and TV Translators/Boosters licensees simulcasting in both an analog or digital mode to pay only a single regulatory fee for the analog facility and its corresponding digital component. We conclude that these measures, which will take effect in FY 2013, will better align regulatory fees with regulatory work performed without imposing undue economic hardship on certain regulatees.

6. This *Report and Order* also adopts several changes that will take effect in FY 2014. Among these, UHF and VHF television stations will be consolidated into one regulatory fee category. We will assess regulatory fees on Internet Protocol TV (IPTV) licensees and we will create a new fee category that will include both cable television and IPTV. Beginning in FY 2014, we will also require that all regulatory fee payments be made electronically and we will no longer mail out initial regulatory fee assessments to CMRS licensees. Finally, beginning in FY 2014, unpaid regulatory fees will be transferred for collection to the U.S. Department of the Treasury at the end of the payment period rather than 180 days thereafter.

7. The FTE reallocations and the cap on fee increases we adopt today are interim measures that constitute the first step in comprehensively examining and reforming our regulatory fee program so that the fees paid by all licensees will more accurately reflect the current cost of regulating them. Various other issues relevant to revising our regulatory fee

<sup>7</sup> ITSPs are interexchange carriers (IXCs), incumbent local exchange carriers (LECs), toll resellers, and other IXC service providers regulated by the Wireline Competition Bureau.

<sup>8</sup> The updated FTE data are current as of Sept. 30, 2012.

program were also raised in either the *FY 2013 NPRM* or in comments submitted in response to it. Because we require further information to best determine what action to take on these complex issues, we will consolidate them for consideration in a Second Further Notice of Proposed Rulemaking that we will issue shortly. We recognize that these are complex issues and that resolving them will be difficult. Nevertheless, we intend to conclusively readjust regulatory fees within three years.

### III. Background

8. Each year the Commission derives the fees that Congress requires it to collect by determining the full-time equivalent number of employees performing the regulatory activities specified in section 9(a), “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. . . .”<sup>9</sup> Regulatory fees must also cover the costs the Commission incurs in regulating entities that are statutorily exempt from paying regulatory fees,<sup>10</sup> entities whose regulatory fees are waived,<sup>11</sup> and entities that provide nonregulated services.<sup>12</sup> To calculate regulatory fees, the Commission allocates the total amount to be collected among the various regulatory fee categories. This allocation is based on the number of FTEs assigned to work in each regulatory fee category. FTEs are categorized as “direct” if they are performing regulatory activities in one of the “core” bureaus, *i.e.*, the Wireless

<sup>9</sup> 47 U.S.C. 159(b)(1)(A). When section 9 was adopted, the total FTEs were to be calculated based on the number of FTEs in the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau. (The names of these bureaus were subsequently changed.) Satellites and submarine cable were regulated through the Common Carrier Bureau before the International Bureau was created.

<sup>10</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662, 11666, para. 11 (2004) (*FY 2004 Report and Order*). For example, governmental and nonprofit entities are exempt from regulatory fees under section 9(h) of the Act. 47 U.S.C. 159(h); 47 CFR 1.1162.

<sup>11</sup> 47 CFR 1.1166.

<sup>12</sup> *E.g.*, broadband services, non-U.S.-licensed space stations.

Telecommunications, Media, Wireline Competition, and International Bureaus. All other FTEs are considered “indirect.”<sup>13</sup> The total FTEs for each fee category is determined by counting the number of direct FTEs regulating licensees in that fee category, plus a proportional allocation of indirect FTEs. Finally, each regulatee within a fee category pays its proportionate share based on an objective measure, *e.g.*, revenues, subscribers, or licenses.<sup>14</sup>

9. We began our regulatory fee reform analysis in the *FY 2008 Further Notice of Proposed Rulemaking*.<sup>15</sup> In that proceeding, we discussed the need to revise and improve our regulatory fee process to better reflect industry, regulatory, and Commission organizational changes.<sup>16</sup> We sought comment on several issues, *e.g.*, reviewing FTE allocations,<sup>17</sup> adding wireless providers to the ITSP category,<sup>18</sup> adding a category for IPTV,<sup>19</sup>

<sup>13</sup> The indirect FTEs are the employees from the following bureaus and offices: Enforcement Bureau, Consumer and Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairman and Commissioners’ offices, Office of Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, and Office of Administrative Law Judges, totaling 967 FTEs.

<sup>14</sup> For a fuller description of this process, see *Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8461–62, paras. 8–11 (2012) (*FY 2012 NPRM*). The current numbers of direct FTEs are as follows: International Bureau, 119; Media Bureau, 171; Wireline Competition Bureau, 160; and Wireless Telecommunications Bureau, 98. FTEs involved in section 309 auctions, 194 FTEs, are not included in this analysis because auctions activities are funded separately.

<sup>15</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) (*FY 2008 FNPRM*).

<sup>16</sup> *FY 2008 FNPRM*, 24 FCC Rcd at 6402, para. 30.

<sup>17</sup> *FY 2008 FNPRM*, 24 FCC Rcd at 6405, para. 41. USTA proposed updating the FTE calculations. USTA Comments (9/25/08) at 2–4. ITTA advocated an annual update of FTE data. ITTA Comments (9/25/08) at 7–9.

<sup>18</sup> *FY 2008 FNPRM*, 24 FCC Rcd at 6404, para. 40. ITTA advocated combining the wireless and ITSP categories. ITTA Comments (9/25/08) at 7–9.

<sup>19</sup> *FY 2008 FNPRM*, 24 FCC Rcd at 6406–07, paras. 48–49.

and adopting a per-subscriber fee for direct broadcast satellite (DBS).<sup>20</sup> Lacking a sufficient record, we did not take any further action on general industry-wide regulatory fee reform at that time; although we took a significant step in regulatory fee reform in the subsequent *Submarine Cable Order* wherein we adopted a new submarine cable bearer circuit methodology for assessing regulatory fees on a cable landing license basis.<sup>21</sup>

10. In 2012, a report on the Commission's regulatory fee program issued by the Government Accountability Office provided support for a fundamental reevaluation of how to align regulatory fees more closely with regulatory costs.<sup>22</sup> In the *FY 2012 NPRM*,<sup>23</sup> we acknowledged that the FTE allocations were outdated; that revising the allocations based on FTEs, without other adjustments, would drastically increase the regulatory fees for International Bureau regulatees; and we suggested that not all International Bureau FTEs should be considered direct FTEs. Comments filed to the *FY 2012 NPRM* were similar to those filed by those commenters in this proceeding.<sup>24</sup>

<sup>20</sup> *FY 2008 FNPRM*, 24 FCC Rcd at 6407, para. 50. NCTA recommended adopting a per-subscriber based regulatory fee for all multichannel video programming distributors (MVPDs). NCTA Comments (9/25/08) at 2–4.

<sup>21</sup> This methodology allocates international bearer circuit costs among service providers without distinguishing between common carriers and non-common carriers, by assessing a flat per cable landing license fee for all submarine cable systems, with higher fees for larger submarine cable systems and lower fees for smaller systems. *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, 4213, para. 11 (2009) (*Submarine Cable Order*).

<sup>22</sup> See GAO, Federal Communications Commission, "Regulatory Fee Process Needs to be Updated," Aug. 2012, GAO-12-686 (GAO Report).

<sup>23</sup> *FY 2012 NPRM*, 27 FCC Rcd 8458.

<sup>24</sup> For example, some commenters argued, in both proceedings, that the Commission should update its FTEs in each core bureau (AT&T Comments (9/17/12) at 3–4, CTIA Reply Comments (10/23/12) at 2–4, Frontier Communications Reply Comments (10/23/12) at 2–6, NCTA Reply Comments (10/23/12) at 3–6, USTA Comments (9/17/12) at 2–7, Verizon Comments (9/17/12) at 2–4, ITTA Ex Parte (2/11/13) at 1–2); that DBS providers should pay regulatory fees to cover Media Bureau activities (ACA Reply Comments (10/23/12) at 4–12); that DBS providers should not pay regulatory fees to cover Media Bureau activities (DIRECTV Ex Parte (11/9/12) at 1–18); and that satellite and submarine cable operators should not be required to pay regulatory fees based on the total number of FTEs in the International Bureau but that the fees should instead be lower (America Movil Comments (9/17/12) at 2–6, Globalstar Reply Comments (10/17/12) at 1–2, Global VSAT Forum Reply Comments (10/23/12) at 4–7, Hughes Network Systems Ex Parte (8/1/12) at 1, Intelsat Reply Comments (10/23/12) at 2–10, ICC Comments (9/17/12) at 5–17, NASCA Comments (9/17/12) at 4–30, SES Ex Parte (3/8/13) at 1–2, SIA Comments (9/17/12) at 12–15, Sirius XM Radio Inc. Reply Comments (10/23/12) at 2–5,

11. In the *FY 2013 NPRM*, we tentatively concluded that our methodology of assigning direct and indirect FTEs should be revised to use current FTE data and that we should reexamine how the direct and indirect costs of our current regulatory activities are allocated among various categories of Commission licensees.<sup>25</sup> Because any change in the allocation of the regulatory fee amount for one category of fee payors necessarily affects the fees paid by payors in all other fee categories, we also proposed that such revisions should take into account the impact on all regulatees. We proposed that the International Bureau should no longer be entirely classified as a "core bureau."<sup>26</sup> We sought comment on specific proposals to revise the allocation of direct and indirect FTEs as well as on more general policy and procedural proposals to assure that regulatory fees are equitable, administrable, and sustainable.<sup>27</sup>

#### IV. Discussion

##### A. Using Current FTE Data

12. As discussed in the *FY 2013 NPRM*, the current allocations of direct and indirect FTEs are taken from FTE data compiled in FY 1998 and may no longer accurately reflect the time that Commission employees devote to these activities.<sup>28</sup> For example, using 1998 FTE data results in ITSPs paying 47 percent of the total annual regulatory fee collection, while the Wireline Competition Bureau employs 29.2 percent of the Commission's direct FTEs. To address this anomaly, in the *FY 2013 NPRM* we proposed to use current FY 2012 FTE data.<sup>29</sup> Several commenters, e.g., ITTA, AT&T, CTIA, and USTA, generally supported this proposal.<sup>30</sup> NAB and other commenters suggest that we defer using this data until we complete an examination of the effects of implementing it.<sup>31</sup> We find

Telstra Comments (9/17/12) at 3). To the extent that the FY 2012 and FY 2013 NPRMs raised the same issues for comment, we have considered herein the comments filed in response to both NPRMs.

<sup>25</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7797, para. 16.

<sup>26</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7799, para. 19.

<sup>27</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7798–7807, paras. 17–40.

<sup>28</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7794–95, para. 9.

<sup>29</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7798, para. 17.

<sup>30</sup> See, e.g., ITTA Comments at 3–7; CTIA Comments at 10; USTA Comments at 2–4; AT&T Comments at 1–2.

<sup>31</sup> NAB Comments at 6 (requesting that "the Commission temporarily defer the implementation of the proposals set forth in the Notice to allow time for additional analysis."). See also ACA Comments at 12 ("it would be prudent and fair for the Commission to do what it can to maintain the regulatory fee status quo until decisions are made on implementing the pending reforms affecting the

that it is consistent with section 9 of the Act to better align, to the extent feasible, regulatory fees with the current costs of Commission oversight and regulation and that the critical issue, noted by NAB and other commenters, is how to equitably resolve the issues of fairness and administrability the use of the new data will bring about.

13. We next consider an allocation methodology for direct and indirect FTEs to better align regulatory fees with the level of current regulation and we make the allocation more transparent.<sup>32</sup> Using FY 2012 FTE data,<sup>33</sup> without other significant changes in our methodology, would reduce the percentage of regulatory fees allocated to Wireline Competition Bureau regulatees from 47 percent to 29.2 percent and increase the percentage of fees allocated to International Bureau regulatees from 6.3 percent to 22 percent.<sup>34</sup> Therefore, substituting current FTE data for FY 1998 FTE data, without other adjustments, would subject international service providers to significant fee increases.<sup>35</sup>

14. We find no persuasive argument for perpetuating the use of 14 year-old FTE data as the basis for regulatory fees in FY 2013, and we therefore adopt our proposal to use current FY 2012 FTE data to calculate FY 2013 regulatory fees. Instead, the critical issue, noted by NAB and other commenters, is whether and to what extent we should adjust the new fees that result from using the current FTE data to assure that our goals of fairness, sustainability, and administrability are met.

##### B. Adjustments to Revised Fees

15. *Reallocation of International Bureau FTEs.* It is not surprising that changes in the scope and focus of Commission regulation since FY 1998 produce substantial shifts in the allocation of regulatory fees when current FTE data is used. In the *FY 2013 NPRM* we analyzed these in detail.<sup>36</sup> The largest shifts would occur in the fees paid by International Bureau and Wireline Competition Bureau licensees: Fees paid by the former would triple, and fees paid by the latter would

fees paid by cable operators."); ABA Reply Comments at 3 (urging the Commission to maintain the current allocations for FY 2013).

<sup>32</sup> The GAO noted the lack of transparency of the regulatory fee process and was particularly concerned with the regulatory fee allocations for the International Bureau and the Wireline Competition Bureau. See GAO Report at p. 23.

<sup>33</sup> The FTEs used herein are determined as of Sept. 30, 2012.

<sup>34</sup> *FY 2012 NPRM*, 27 FCC Rcd at 8467, para. 25.

<sup>35</sup> *Id.*

<sup>36</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7795–98, paras. 11–17.

decrease by about 40 percent. The fees paid by wireless and media service licensees would also change, but to a lesser extent.<sup>37</sup>

16. The first issue we face is how the Commission should address these fluctuations in setting regulatory fees for FY 2013. One way would be to take a fresh look at how direct and indirect FTEs are allocated to determine whether these allocations accurately reflect the regulatory activities performed by FTEs in the core bureaus. As we have previously noted, this analysis is complicated by the convergence of digitally-based services, which can have the practical effect of causing the work of FTEs in one bureau to tangentially benefit licensees in another bureau. In one singular case, however, the work of a bureau's FTEs primarily benefits licensees regulated by other bureaus. As we discussed at length in the *FY 2012* and *FY 2013 NPRMs*, the International Bureau is exceptional compared to the other licensing bureaus in that the work of many of its FTEs predominantly benefits other bureaus' licensees rather than its own.<sup>38</sup> We incorporate that analysis by reference herein. Based on the facts and analysis we presented, we adopt our proposal, with one slight modification. Specifically, as proposed in the FY 2013 NPRM, we reallocate the FTEs in the International Bureau's Strategic Analysis and Negotiation Division (SAND), as well as all but 27 direct FTEs in the Policy and Satellite Divisions as indirect FTEs. In addition, we allocate one FTE from the Office of the Bureau Chief as direct.<sup>39</sup> As commenters suggest, we find that, based on further examination of the work done in the Office of the Bureau Chief, it is not appropriate to treat the entire office as indirect.<sup>40</sup> We therefore now find a more appropriate number representing the direct FTEs actually engaged in the regulation and oversight of International Bureau licensees is 28.<sup>41</sup>

17. Not all commenters agreed with these proposals, although commenters did agree that we should not assign all

of the International Bureau FTEs as direct FTEs. USTA suggests that we follow the proposal in the *FY 2012 NPRM* and remove only one division, SAND, from the "core" International Bureau.<sup>42</sup> Several commenters agree that many of the FTEs in the International Bureau should not be considered direct, but observe that similar situations occur in other bureaus and urge us to take a closer look at all bureaus.<sup>43</sup>

18. NAB and ABA recommend that we should not limit our analysis to the International Bureau, but should consider all such cross-cutting work throughout the Commission before revising our FTE reallocations.<sup>44</sup> Commenters have provided specific suggestions for other reallocations, *e.g.*, assigning Enforcement Bureau and Consumer & Governmental Affairs FTEs as direct costs to the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Media Bureau<sup>45</sup>; assigning some Media Bureau FTEs to the Wireless Telecommunications Bureau<sup>46</sup>; reallocating regulatory fees among International Bureau regulatees in order to lower the submarine cable system fee<sup>47</sup>; as well as assessing Media Bureau costs to DBS providers.<sup>48</sup>

19. We recognize that there is substantial convergence in the industry

<sup>42</sup> USTA Comments at 6–7.

<sup>43</sup> *See, e.g.*, ITTA Comments at 5–6 (Wireline Competition Bureau's work on Universal Service Fund issues benefits regulatees in the wireless, cable, and satellite industries); CCA Comments at 6 (the Commission "should review the functions and activities of all Bureaus rather than just the International Bureau."); Comments of EchoStar and DISH at 7 & Reply Comments at 4 (Commission should "apply the same type of enhanced scrutiny . . . to bureaus and offices currently categorized as consisting of 'indirect' FTEs").

<sup>44</sup> NAB Comments at 4–5 ("The Commission should either undertake a complete accounting or the actual functions of FTEs in the core bureaus, and allocate regulatory fees accordingly, or consider retaining the existing process of allocating fees based on the percentages of FTEs in the core bureaus."); ABA Reply Comments at 2–3.

<sup>45</sup> SIA Comments at 10–11 & Reply Comments at 5–6.

<sup>46</sup> NAB Comments at 4 (some Media Bureau FTEs work on spectrum and wireless-related issues).

<sup>47</sup> NASCA Comments at 8–9; Telstra Comments at 2–3; ICC Reply Comments at 2.

<sup>48</sup> We sought comment on this issue and intend to address it in a subsequent proceeding. *See FY 2013 NPRM*, 28 FCC Rcd at 6407, para. 50. *See, e.g.*, AT&T Comments at 4–5 (recommending a single MVPD fee category that would include all MVPDs); ACA Comments at 13–18 (same) & Reply Comments at 1–6 ("this much-needed regulatory reform will ensure regulatory parity between cable operators and DBS providers"); NCTA Reply Comments at 2–5 ("All MVPDs are subject to some level of regulation administered by the Media Bureau and they all benefit from the Bureau's regulation of other entities."); DIRECTV Comments at 1–20 (opposing including DBS in such a category); EchoStar and DISH Comments at 18–20 & Reply Comments at 4–6 (same).

and organizational change in the Commission that may support additional FTE reallocations after further analysis. The high percentage of indirect FTEs is indicative of the fact that many Commission activities and costs are not limited to a particular fee category and instead benefit the Commission as a whole. Even without the changes we adopt today, the number of non-core bureau FTEs are almost double the number of core bureau (non-auction) FTEs, demonstrating that our common costs far outweigh costs assigned to a particular core bureau.

20. CTIA contends that "selective reallocation" would be "arbitrary and capricious"<sup>49</sup> upending the regulatory fee structure in contravention of section 9 of the Act.<sup>50</sup> CTIA further maintains that the Commission's proposal reflects a system of cost allocation that does not depend on the cost of Commission regulation but rather on a "fair share" rationale that is incompatible with the Act.<sup>51</sup> This would cause "a tremendous amount of complexity and uncertainty" and, if applied broadly, would "threaten[ ] the administrability of the regulatory fee program."<sup>52</sup> We disagree with these arguments. Section 9(a) and (b)(1)(A) in relevant part directs the Commission to establish regulatory fees based on the number of FTEs engaged in regulatory activities within the named bureaus "and other offices of the Commission." Thus, the plain wording of the statute requires the Commission to calculate fees based on what FTEs are doing, not on where they are located. Nowhere does the statute explicitly or implicitly limit the Commission's ability to reassign FTEs, and the costs they represent, among the various bureaus. Furthermore, because the "benefits provided" to fee payors by International Bureau FTEs inure mainly to licensees in other bureaus, the

<sup>49</sup> CTIA Comments at 12 ("It would be arbitrary and capricious for the Commission to implement any reallocation of FTEs in the WCB without providing parties sufficient time and information to adequately consider the proposal.")

<sup>50</sup> CTIA Comments at 7. CTIA states that "the Commission's proposal to subject wireless regulatees to the ITSP regulatory fee category does not satisfy the necessary conditions set forth in Section 9." *Id.*

<sup>51</sup> CTIA Comments at 3. CTIA contends that the wireless industry's overall contribution to the Commission's budget includes spectrum auction proceeds. *Id.*

<sup>52</sup> CTIA's concern is that the *FY 2013 NPRM* does not "provide a governing standard and, if applied broadly, would upend the regulatory fee structure." CTIA Comments at 11. The only specific example given by CTIA to support this argument is that the *FY 2013 NPRM* "fails to explain why all FTEs in the IB front office would be treated to a different standard than front office personnel in other core bureaus, none of whom are considered indirect FTEs." *Id.*

<sup>37</sup> *FY 2012 NPRM*, 27 FCC Rcd 8458, 8467, para. 25.

<sup>38</sup> *FY 2012 NPRM*, *supra* at paras. 26–27; *FY 2013 NPRM*, 28 FCC Rcd at 7799–7803, paras. 19–28.

<sup>39</sup> Most commenters agree with our proposal. *See, e.g.*, ICC Comments at 2–3 & Reply Comments at 3–4 (supports *FY 2013 NPRM* proposal for International Bureau); Intelsat Comments at 2–3 (same); AT&T Comments at 2 (same); Telstra Comments at 2 (same); SES Comments at 2 (same); SIA Comments at 4–9 & Reply Comments at 2–5 (same); EchoStar and DISH Comments at 6 & Reply Comments at 2–4 (same); NASCA Comments at 3–8 (same).

<sup>40</sup> *See* CTIA Comments at 10–11.

<sup>41</sup> For this reason, the International Bureau would remain a core bureau, in part.

reallocation of these FTEs to the other bureaus is consistent with section 9(b)(1)(A) and is not arbitrary and capricious. Limiting reassignments to the FTEs in SAND as USTA proposes would also not be appropriate because further analysis has shown that the work of some FTEs in the International Bureau's Policy and Satellite Divisions also predominantly benefits the licensees of other bureaus.

21. Nor can we agree with NAB that we must toll all FTE reassignments until we have reexamined the allocation of FTEs throughout the Commission. As EchoStar and DISH observe, the fact that we have not yet examined all bureaus on a division or branch level should not prevent us from adopting our proposal.<sup>53</sup> As we have noted, the extent to which the International Bureau's FTEs are engaged in activities that primarily benefit licensees regulated by other bureaus is *sui generis*, and no commenter in this proceeding has submitted any facts that contradict this finding. Moreover, our analysis shows that the digitally-driven convergence of formerly separate services will make a similar examination of possible FTE reallocations among the other licensing bureaus a much more difficult and lengthy task. It would be inconsistent with section 9 to delay reallocating the International Bureau FTEs, where the reallocation is clearly warranted, while we engage in painstaking examinations of less clear and more factually complex situations in the other bureaus. Finally, because the International Bureau's situation is exceptional, we do not perceive how, as CTIA would argue, that the proposed reallocation can constitute a "slippery slope."<sup>54</sup> For these reasons we conclude it is reasonable and consistent with section 9 of the Act to readjust the assignment of FTEs in the bureau where the record demonstrates the clearest case for reassignment.

22. At the same time, however, we recognize that a reexamination of how FTEs are allocated throughout the Commission is an indispensable part of comprehensively revising the Commission's regulatory fee program. For this reason as stated in paragraph 5 above, we will issue a Second Further Notice of Proposed Rulemaking in the near future to examine these, and other related issues.

23. *Limiting Fee Increases.* As noted in para. 13 above, using current FTE figures causes shifts in the allocation of regulatory fee collection among the

Bureaus and, consequently, the fees their licensees will pay. Because we are required by statute to set regulatory fees that will recover the entire amount of our appropriation, any reduction in the proportion of all regulatory fees paid by licensees in one fee category will necessarily result in an increase in regulatory fees paid by licensees in others. For the same reason, limiting fee increases for licensees in some fee categories will necessarily limit fee decreases that licensees in other fee categories would otherwise receive. With these considerations in mind, and to avoid sudden and large changes in the amount of fees paid by various classes of regulatees, we proposed in the *FY 2013 NPRM* to cap increases in FY 2013 fees to no more than 7.5 percent.<sup>55</sup>

24. USTA strongly opposes this limitation on fee rate increases or any other transition to fully normalized fees, contending that such proposals try to insure fairness to other fee payors while ignoring the fact that ITSPs have been paying a disproportionate share of regulatory fees for a decade.<sup>56</sup> ITTA argues that any cap should only be applied in FY 2013.<sup>57</sup> AT&T contends that a cap on increases would be unnecessary if the Commission fairly accounted for FTE distribution among all the core bureaus.<sup>58</sup> The International Carrier Coalition agreed with our finding that limiting fee increases would have the unavoidable effect of also limiting fee decreases, and stated that for that reason "the proposed 7.5% cap on increases/decreases of regulatory fees should be an interim measure only."<sup>59</sup>

25. We disagree with the commenters objecting to the imposition of the 7.5%

<sup>55</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7803-04, paras. 30-31.

<sup>56</sup> USTA Comments at 4-5. Several commenters agree that a limitation on fee increases is needed to prevent economic hardship. See, e.g., CCA Comments at 6 ("any fee increases resulting from the use of updated data should be capped to limit the severity of the impact on payors"); Echostar and DISH Comments at 13-14 ("a reasonable approach would be for the Commission to establish a guideline providing for a multi-year phase in of any fee increase where the change would exceed the rate of inflation"); NASCA Comments at 10 (a 7.5% "cap on fee increases is consistent with the requirements of Section 9"); ACA Comments at 11 (supporting the proposed 7.5% cap); SIA Reply Comments at 9-10 (a cap on fee increases is needed); ICC Reply Comments at 4 (the proposed cap should be an interim measure only); ABA Reply Comments at 2 (even with the 7.5% cap, the fee increase will cause "irreparable injury" to small broadcasters). See also NAB Comments at 6 ("We also urge the Commission to be cognizant of the burden that regulatory fees impose on some Commission licensees, particularly the smallest broadcast stations, which may have a few as two or three permanent staff.").

<sup>57</sup> ITTA Comments at 2.

<sup>58</sup> AT&T Comments at 2.

<sup>59</sup> ICC Comments at 7. Also see note 69 below.

cap on fee increases. As an initial matter we note that the imposition of a cap on fee increases is not unprecedented. In 1997 we imposed a 25 percent cap to avoid the prospect of "fee shock" resulting from large and unpredictable fluctuations in fees.<sup>60</sup> Today, a different set of circumstances supports the imposition of a more modest, interim cap. The regulatory fees we adopt today reflect only the first of a series of changes that we will consider in the comprehensive revision of our regulatory fee program. As we noted in the *FY 2013 NPRM*, and in para. 5 above, there are unresolved regulatory fee reform initiatives on which we will seek comment and which could be adopted and implemented in setting regulatory fees in FY 2014.<sup>61</sup> Capping fee increases at 7.5% is a conservative interim approach to assure that any fee increases resulting from use of the new FTE data will be reasonable as we transition to a revised regulatory fee program in which regulatory fees will more closely reflect the current costs and benefits of Commission regulation.

26. USTA and other commenters have pointed out that ITSPs will be most affected by any limitation on fee increases. USTA opposes the 7.5% cap on fee increases, contending that ITSPs have been paying "an inordinate share of regulatory fees, paying 47 percent of the total fees while only 29.2 percent of the direct FTEs are assigned to the Wireline Competition Bureau."<sup>62</sup>

27. We agree with USTA's contention that ITSP fees should be reduced to more accurately reflect the regulatory costs that the industry currently generates, and thus the interim fees we adopt today give ITSPs a significant reduction in their FY 2013 fees. However, we cannot "flash cut" to immediate, unadjusted use of the FY 2012 FTE data without engendering significant and unexpected fee increases for other categories of fee payors. As noted above, the cap we impose on fee increases for some licensees will unavoidably limit the fee reductions other licensees, like ITSPs, would otherwise enjoy; simply put, capping fee increases reduces the amount of money available to effectuate all of the

<sup>60</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17161, 17176, para. 37 (1997). The fee shock the Commission sought to avoid was caused by the use of employee time sheet entries to calculate direct and indirect FTEs, a methodology that was ultimately abandoned as unworkable.

<sup>61</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7803, para. 30.

<sup>62</sup> USTA Comments at 4-5. AT&T contends that a cap on increases should be unnecessary if the Commission would fairly account for FTE distribution among the core bureaus. AT&T Comments at 2.

<sup>53</sup> EchoStar and DISH Reply Comments at 4.

<sup>54</sup> CTIA Reply Comments at 5, quoting USTA Comments at 7.

reductions in this fiscal year. We are satisfied, however, that as an interim measure the limitations on fee increases are reasonable, and the resulting fee changes are likewise reasonable. Moreover, as this is an interim measure, we commit to revisit these issues and make whatever further fee reductions are warranted in the course of adopting further revisions to our regulatory fee program.<sup>63</sup>

28. *Limiting Fee Decreases.* We are confronted with somewhat different issues in evaluating whether to cap the amount of the fee decrease that any class of fee payors might otherwise receive as a result of our use of current FTE data. The revised FY 2013 fee calculations appearing at Attachment B of the *FY 2013 NPRM* reflect both a 10%

cap on decreases, as well as a 7.5% cap on increases.<sup>64</sup> Although the caption to Attachment B clearly stated that the fees resulted from the imposition of a 7.5% cap, it did not state that the fees also reflected a 10% cap on decreases. The text of the *FY 2013 NPRM* did not reference this fact, however, nor did it request comment on the issue of capping fee decreases. Although we requested comment on the general issues of limiting fee increases and adopting possible measures to address the impacts of such limits, no party specifically addressed the issue of an offsetting limit to decreases in comments.<sup>65</sup> Under these circumstances, we cannot find that interested parties were afforded an

adequate opportunity to comment on the issue of capping fee decreases. Although this situation would normally be addressed by requesting comments on this issue, here we would not be able to receive and analyze further comments in time to publish and collect fees by the end of FY 2013. Further, as stated above, we find the FY 2013 fee changes resulting from imposition of a 7.5% cap on fee increases to be reasonable. For these reasons we find it necessary to adopt revised FY 2013 fee calculations that reflect only the application of a 7.5% cap on fee increases and no cap on fee decreases. The revised fees are set forth in Table 2 and Table 3 below. The sources of the units for the fees appear in Table 4.

TABLE 2—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,<sup>5</sup> FEE RATE INCREASES CAPPED AT 7.5%; CALCULATION OF FY 2013 REVENUE REQUIREMENTS AND PRO-RATA FEES

[The first ten regulatory fee categories in the table below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2013 payment units	Years	FY 2012 revenue estimate	Pro-Rated FY 2013 revenue requirement	Uncapped FY 2013 regulatory fee	Rounded & capped FY 2013 regulatory fee	Expected FY 2013 revenue
PLMRS (Exclusive Use) .....	1,400	10	490,000	605,350	43	40	560,000
PLMRS (Shared use) .....	15,000	10	2,250,000	2,897,033	19	15	2,250,000
Microwave .....	13,200	10	2,640,000	2,853,794	22	20	2,640,000
218–219 MHz (Formerly IVDS) .....	5	10	3,500	4,324	86	75	3,750
Marine (Ship) .....	6,550	10	655,000	951,265	15	10	655,000
GMRS .....	7,900	5	192,500	345,914	9	5	197,500
Aviation (Aircraft) .....	2,900	10	290,000	432,393	15	10	290,000
Marine (Coast) .....	285	10	142,500	172,957	61	55	156,750
Aviation (Ground) .....	900	10	135,000	172,957	19	15	135,000
Amateur Vanity Call Signs .....	14,300	10	214,500	259,436	1.81	1.61	230,230
AM Class A <sup>4</sup> .....	65	1	250,100	294,808	4,536	4,400	286,000
AM Class B <sup>4</sup> .....	1,510	1	3,125,875	3,664,040	2,427	2,275	3,435,250
AM Class C <sup>4</sup> .....	890	1	1,107,975	1,305,578	1,467	1,350	1,201,500
AM Class D <sup>4</sup> .....	1,500	1	3,698,400	4,337,887	2,892	2,575	3,862,500
FM Classes A, B1 & C3 <sup>4</sup> .....	3,075	1	7,764,750	8,970,581	2,917	2,725	8,379,375
FM Classes B, C, C0, C1 & C2 <sup>4</sup> .....	3,140	1	9,513,000	11,034,236	3,514	3,375	10,597,500
AM Construction Permits .....	51	1	35,750	42,115	826	590	30,090
FM Construction Permits <sup>1</sup> .....	190	1	84,000	421,154	2,217	750	142,500
Satellite TV .....	125	1	178,125	210,577	1,685	1,525	190,625
Satellite TV Construction Permit .....	3	1	3,580	4,212	1,404	960	2,880
VHF Markets 1–10 .....	23	1	1,761,650	2,366,150	102,876	86,075	1,979,725
VHF Markets 11–25 .....	23	1	1,836,875	2,454,013	106,696	78,975	1,816,425
VHF Markets 26–50 .....	39	1	1,512,400	2,034,276	52,161	42,775	1,668,225
VHF Markets 51–100 .....	61	1	1,255,500	1,757,149	28,806	22,475	1,370,975
VHF Remaining Markets .....	137	1	798,025	1,020,393	7,448	6,250	856,250
VHF Construction Permits <sup>1</sup> .....	1	1	11,650	6,250	6,250	6,250	6,250
UHF Markets 1–10 .....	112	1	3,853,150	4,248,631	37,934	38,000	4,256,000
UHF Markets 11–25 .....	109	1	3,458,250	3,781,729	34,695	35,050	3,820,450
UHF Markets 26–50 .....	140	1	2,959,875	3,232,818	23,092	23,550	3,297,000
UHF Markets 51–100 .....	239	1	2,868,750	3,099,301	12,968	13,700	3,274,300
UHF Remaining Markets .....	247	1	845,975	916,915	3,712	3,675	907,725
UHF Construction Permits <sup>1</sup> .....	4	1	23,975	14,700	3,675	3,675	14,700
Broadcast Auxiliaries .....	25,400	1	248,000	336,923	13	10	254,000
LPTV/Translators/Boosters/Class A TV .....	3,725	1	1,436,820	1,684,616	452	410	1,527,250
CARS Stations .....	325	1	178,125	210,634	648	510	165,750
Cable TV Systems .....	60,000,000	1	59,090,000	69,719,942	1.162	1.02	61,200,000
Interstate Telecommunication Service Providers .....	\$39,000,000,000	1	148,875,000	118,979,384	0.00305	0.00347	135,330,000
CMRS Mobile Services (Cellular/Public Mobile) .....	326,000,000	1	53,210,000	63,105,583	0.194	0.18	58,680,000
CMRS Messag. Services .....	3,000,000	1	272,000	240,000	0.0800	0.080	240,000

<sup>63</sup> ITTA proposes a 14% limitation, for one year. ITTA Ex Parte Communication (July 11, 2013) at 2. For the reasons discussed above, we disagree with ITTA's proposal.

<sup>64</sup> 28 FCC Rcd 7790, 7823, Attachment B, "Revised FTE (as of 9/30/12) Allocations, Fee Rate Increases Capped at 7.5%, Prior to Rounding."

<sup>65</sup> As noted at para. 22 *supra*, ICC in its comments referred to "the proposed 7.5% cap on fee increases/decreases," but in context ICC was simply

addressing the fact, discussed above, that limiting fee increases will necessarily limit fee decreases as well. ICC did not discuss the specific issue of whether fee decreases should be capped and, if so, at what level.

TABLE 2—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,<sup>5</sup> FEE RATE INCREASES CAPPED AT 7.5%; CALCULATION OF FY 2013 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[The first ten regulatory fee categories in the table below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2013 payment units	Years	FY 2012 revenue estimate	Pro-Rated FY 2013 revenue requirement	Uncapped FY 2013 regulatory fee	Rounded & capped FY 2013 regulatory fee	Expected FY 2013 revenue
BRS <sup>2</sup>							
LMDS	920	1	451,250	693,680	754	510	469,200
	170	1	225,625	128,180	754	510	86,700
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	3,823,249	1	1,157,602	1,066,139	.279	.27	1,032,277
Submarine Cable Providers (see chart in Appendix C) <sup>3</sup>	39.19	1	8,150,984	7,504,167	191,494	217,675	8,530,139
Earth Stations	3,400	1	893,750	824,068	242	275	935,000
Space Stations (Geostationary)	87	1	11,560,125	10,646,958	122,379	139,100	12,101,700
Space Stations (Non-Geostationary)	6	1	858,900	791,105	131,851	149,875	899,250
Total Estimated Revenue to be Collected			340,568,811	339,844,006			339,965,741
Total Revenue Requirement			339,844,000	339,844,000			339,844,000
Difference			724,811	6			121,741

<sup>1</sup> The VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

<sup>2</sup> MDS/MMDS category was renamed Broadband Radio Service (BRS). 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, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

<sup>3</sup> The chart at the end of Table 3 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Second Report and Order (MD Docket No. 08–65, RM–11312), released March 24, 2009; and Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking and Order (MD Docket No. 09–65, MD Docket No. 08–65), released on May 14, 2009.

<sup>4</sup> The fee amounts listed in the column entitled "Rounded New FY 2013 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2013 regulatory fees for AM/FM radio stations are listed on a grid located at the end of Table 3.

<sup>5</sup> The allocation percentages represent FTE data as of September 30, 2012, and include the proposal to use 28 Direct FTEs (rather than 119 FTEs) for the International Bureau.

TABLE 3—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,<sup>1</sup> FEE RATE INCREASES CAPPED AT 7.5%; FY 2013 SCHEDULE OF REGULATORY FEES

[The first eleven regulatory fee categories in the table below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	75
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	55
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.61
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	510
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	510
AM Radio Construction Permits	590
FM Radio Construction Permits	750
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	86,075
Markets 11–25	78,975
Markets 26–50	42,775
Markets 51–100	22,475
Remaining Markets	6,250
Construction Permits	6,250
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	38,000
Markets 11–25	35,050
Markets 26–50	23,550
Markets 51–100	13,700
Remaining Markets	3,675
Construction Permits	3,675
Satellite Television Stations (All Markets):	1,525
Construction Permits—Satellite Television Stations	960

TABLE 3—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,<sup>1</sup> FEE RATE INCREASES CAPPED AT 7.5%; FY 2013 SCHEDULE OF REGULATORY FEES—Continued

[The first eleven regulatory fee categories in the table below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$'s)
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	410
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	510
Cable Television Systems (per subscriber) (47 CFR part 76)	1.02
Interstate Telecommunication Service Providers (per revenue dollar)	.00347
Earth Stations (47 CFR part 25)	275
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	139,100
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	149,875
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.27
International Bearer Circuits—Submarine Cable	See Table Below

<sup>1</sup> The allocation percentages represent FTE data as of September 30, 2012, and include the proposal to use 28 Direct FTEs (rather than 119 FTEs) for the International Bureau.

FY 2013 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	\$775	\$645	\$590	\$670	\$750	\$925
25,001–75,000	1,550	1,300	900	1,000	1,500	1,625
75,001–150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001–500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001–1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001–3,000,00	7,750	6,500	4,500	5,400	8,250	9,250
>3,000,000	9,300	7,800	5,700	6,750	10,500	12,025

FY 2013 SCHEDULE OF REGULATORY FEES: FEE RATE INCREASES CAPPED AT 7.5%

[International Bearer Circuits—Submarine Cable]

Submarine cable systems (capacity as of December 31, 2012)	Fee amount	Address
< 2.5 Gbps	\$13,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	27,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	54,425	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps.	108,850	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	217,675	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Table 4—Sources of Payment Unit Estimates for FY 2013

In order to calculate individual service fees for FY 2013, we adjusted FY 2012 payment units for each service to more accurately reflect expected FY 2013 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 our Universal Licensing System (“ULS”), International Bureau Filing System (“IBFS”), Consolidated Database System (“CDBS”) and Cable Operations

and Licensing System (“COALS”), 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 sought verification for these estimates from multiple sources and, in all cases; we compared FY 2013 estimates with actual FY 2012 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 with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2013 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. When we note, for example, that our estimated FY 2013 payment units are based on FY 2012 actual payment units, it does not necessarily mean that our FY 2013 projection is exactly the same number as in FY 2012. We have either rounded the FY 2013 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 Cellular/Mobile Services .....	Based on WTB projection reports, and FY 12 payment data.
CMRS Messaging Services .....	Based on WTB reports, and FY 12 payment data.
AM/FM Radio Stations .....	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
UHF/VHF Television Stations .....	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
AM/FM/TV Construction Permits .....	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
Broadcast Auxiliaries .....	Based on actual FY 2012 payment units.
BRS (formerly MDS/MMDS) .....	Based on WTB reports and actual FY 2012 payment units.
LMDS .....	Based on WTB reports and actual FY 2012 payment units.
Cable Television Relay Service (“CARS”) Stations.	Based on data from Media Bureau’s COALS database and actual FY 2012 payment units.
Cable Television System Subscribers .....	Based on publicly available data sources for estimated subscriber counts and actual FY 2011 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2012, the Wireline Competition Bureau projected the amount of calendar year 2012 revenue that will be reported on 2013 FCC Form 499–A worksheets in April, 2013.
Earth Stations .....	Based on International Bureau (“IB”) licensing data and actual FY 2012 payment units.
Space Stations (GSOs & NGSOs) .....	Based on IB data reports and actual FY 2012 payment units.
International Bearer Circuits .....	Based on IB reports and submissions by licensees.
Submarine Cable Licenses .....	Based on IB license information.

29. The most significant shifts between the recalculated fees we adopt today and the fees that appear in Attachment B of the *FY 2013 Notice* affect International Bureau licensees. The reallocation of FTEs from the International Bureau, combined with a 10% cap on decreases, would have provided licensees of Earth Stations, Geostationary Orbit Space Stations, Non-Geostationary Orbit Satellite Systems, and Submarine Cable Systems with reductions of 3.85% to 10.01% from the fees they paid in FY 2012.<sup>66</sup> Removing the 10% cap on decreases

<sup>66</sup>The specific reductions would have been 10.91% for Earth Stations, 10.01% for Geostationary Orbit Space Stations, Non-Geostationary Orbit Satellite Systems, and Submarine Cable Systems, and 3.85% for International Bearer Circuits.

causes the fees these licensees will pay in FY 2013 to increase between 2.31% and 4.70% over the fees they paid in FY 2012.<sup>67</sup> Although at variance from the results we had projected, we find that these modest increases in the fees international service licensees will pay this year are unlikely to affect their ability to continue offering the services for which the Commission has licensed

<sup>67</sup>The specific increases will be Geostationary Orbit Space Stations, 4.68%, Non-Geostationary Orbit Satellite Systems, 4.70%, International Bearer Circuits, 3.85%, and Submarine Cable Systems, 2.31%. Fees for Earth Stations will not increase. Applying the other adjustments we adopt today while removing the 10% cap on decreases means that ITSPs’ FY 2013 fees will be reduced by 7.47% instead of 4.27%.

them.<sup>68</sup> Moreover, we emphasize again that the adjustments reflected in all the fees we adopt today are but an initial step in the process of comprehensively reforming the way we assess regulatory fees, a process that we anticipate will lead to further significant changes in the regulatory fees Commission licensees will pay in FY 2014 and beyond.

30. The new allocations that result from the International Bureau FTE reassignments and the imposition of the 7.5 percent cap are as follows:<sup>69</sup>

<sup>68</sup>The Commission’s rules allow any individual licensee unable to pay its regulatory fees to request and obtain a waiver, reduction, or deferral of payment for good cause shown. See 47 CFR 1.1166.

<sup>69</sup>The allocations before imposition of a 7.5% cap on increases are 6.13%, 37.42%, 35.01%, and 21.44% respectively.

International Bureau .....	Formerly 6.3% .....	FY 2013 6.91%.
Media Bureau .....	Formerly 30.2% .....	FY 2013 33.69%.
Wireline Competition Bureau .....	Formerly 46.7% .....	FY 2013 39.81%.
Wireless Telecommunications Bureau .....	Formerly 16.8% .....	FY 2013 19.59%.

### C. Changes to the Fee Categories, Using Revised FTE Data

31. As we discussed above in paragraph 18, we intend to further examine other possible FTE reallocations. We have concluded that the International Bureau is exceptional in that most of its activities benefit the regulatees of other bureaus and offices instead of its own regulatees, and none of the commenters have shown that this is the case to the same extent with regard to any other core bureau. If parties can show that other bureaus' activities directly benefit licensees of different bureaus as disproportionately as the International Bureau's activities do, or that a non-core bureau's activities benefit only certain bureaus or regulatees, we will consider those showings in setting regulatory fees in FY 2014. We will continue to examine these suggestions as we continue our regulatory fee reform, as well as our proposals that we do not reach in this Report and Order: to combine the ITSP and wireless categories,<sup>70</sup> to use revenues in calculating all regulatory fees,<sup>71</sup> and to include DBS providers in a new MVPD category.<sup>72</sup> We find additional time is necessary and appropriate to examine these proposals under Section 9 of the Communications Act and analyze how these proposals account for changes in the communications industry and the Commission's regulatory processes and staffing.<sup>73</sup>

<sup>70</sup> ITTA supports this proposal. ITTA Comments at 3–7. Other commenters, however, do not. *See, e.g.*, CTIA Comments at 6–8 & Reply Comments at 3; AT&T Comments at 3; CCA Comments at 3–6; Verizon Reply Comments at 1–2.

<sup>71</sup> ITTA supports a revenue-based assessment for wireline and wireless voice services. *See* ITTA Comments at 7–9. Fireweed supports a revenue-based assessment, with a discount for broadcasters. *See* Fireweed Comments at 3–6. Several commenters oppose this proposal. *See, e.g.*, ACA Comments at 8–9; CTIA Comments at 8 & ex parte (7/15/13) at 1–2; DIRECTV Comments at 18–19; EchoStar and DISH Comments at 10–12; NASCA Comments at 13–14; NCTA Reply Comments at 5–6; SES Comments at 2; SIA Reply Comments at 8.

<sup>72</sup> *See, e.g.*, AT&T Comments at 4–5; ACA Comments at 13–18 & Reply Comments at 1–6; NCTA Reply Comments at 2–5. DIRECTV and EchoStar and DISH oppose this proposal. *See* DIRECTV Comments at 1–20; EchoStar and DISH Comments at 18–20 & Reply Comments at 4–6.

<sup>73</sup> *See, e.g.*, NAB Comments at 6 (requesting that “the Commission temporarily defer the implementation of the proposals set forth in the Notice to allow time for additional analysis.”); ACA Comments at 12 (“it would be prudent and fair for the Commission to do what it can to maintain the

### D. Other Telecommunications Regulatory Fee Issues

#### 1. Combining UHF/VHF Television Regulatory Fees Into One Fee Category Effective FY 2014

32. Regulatory fees for full-service television stations are calculated based on two, five-tiered market segments for Ultra High Frequency (UHF) and Very High Frequency (VHF) television stations. After the transition to digital television on June 12, 2009, we proposed that the Commission combine the VHF and UHF regulatory fee categories.<sup>74</sup> In response, Fireweed argued that we should base the regulatory fee structure on three tiers and Sky Television, LLC, Spanish Broadcasting System, Inc., and Sarkes Tarzian argued that instead of six separate categories for both VHF and UHF we should combine all television stations into a single six-tiered category based on market size, thus eliminating any distinction between VHF and UHF.<sup>75</sup> In its most recent comments, Sarkes Tarzian and Sky Television support our proposal to combine the VHF and UHF fee categories within the same market area into one fee category but suggests that the Commission implement this proposal in FY 2013 rather than FY 2014.<sup>76</sup> In a recent Notice of Ex Parte Presentation, filed by Sarkes Tarzian and Sky Television on February 15, 2013, these parties argued that because VHF stations are less desirable than UHF stations it is unfair to levy higher fees on them.

33. Historically, analog VHF channels (channels 1–13) were coveted for their greater prestige and larger audience, and thus the regulatory fees assessed on VHF stations were higher than regulatory fees assessed for UHF (channels 14 and above) stations in the same market area. After the digital

regulatory fee status quo until decisions are made on implementing the pending reforms affecting the fees paid by cable operators.”); ABA Reply Comments at 3 (urging the Commission to maintain the current allocations for FY 2013).

<sup>74</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278, 9285–86, at paras. 18–20 (2010) (*FY 2010 Report and Order*).

<sup>75</sup> *See also* Notice of Ex Parte Presentation, filed by Sarkes Tarzian and Sky Television (Feb. 15, 2013) (arguing that VHF stations are less desirable than UHF stations and it was unfair to have higher fees for such stations; instead the fee categories should be combined).

<sup>76</sup> *See* Sarkes Tarzian and Sky Television Comments at 2–5.

conversion, it became evident that VHF channels were less desirable than digital UHF channels, and thus there may no longer be a basis in which to assess a higher regulatory fee on VHF channels. Therefore, in the *FY 2013 NPRM* we proposed to combine the VHF and UHF stations in the same market area into one fee category beginning in FY 2014 and eliminate the fee disparity between VHF and UHF stations. For the reasons given in the *FY 2013 NPRM*, we adopt our proposal to combine UHF and VHF full service television station categories into one fee category.

34. Sarkes Tarzian and Sky Television also request that the Commission implement this proposal in FY 2013.<sup>77</sup> With respect to this request, we note that section 9(b)(3) directs 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.”<sup>78</sup> Combining UHF and VHF full-service television stations into one fee category constitutes a reclassification of services in the regulatory fee schedule as defined in section 9(b)(3) of the Act,<sup>79</sup> and pursuant to section 9(b)(4)(B) must be submitted to Congress at least 90 days before it becomes effective.<sup>80</sup> The Commission will not have sufficient time to implement this change before September 30, 2013 and therefore we will implement this change in FY 2014.

#### 2. Including Internet Protocol TV in Cable Television Systems Category, for FY 2014

35. IPTV is digital television delivered through a high speed Internet connection, instead of by the traditional cable method. IPTV service generally is offered bundled with the customer's Internet and telephone or VoIP services. In the *FY 2008 Report and Order* we first sought comment on whether this service should be subject to regulatory fees.<sup>81</sup> In the *FY 2013 NPRM*, we

<sup>77</sup> *See* Sarkes Tarzian and Sky Television Comments at 2–5.

<sup>78</sup> 47 U.S.C. 159(b)(3).

<sup>79</sup> 47 U.S.C. 159(b)(3).

<sup>80</sup> 47 U.S.C. 159(b)(4)(B).

<sup>81</sup> *FY 2008 FNPRM*, 24 FCC Rcd at 6406–07, paras. 48–49. We observed that “[f]rom a customer's perspective, there is likely not much difference between IPTV and other video services, such as cable service.” *Id.*

observed that by assessing regulatory fees on cable television systems, but not on IPTV, we may place cable providers at a competitive disadvantage.<sup>82</sup> Commenters addressing this issue agree that we should assess regulatory fees on that service.<sup>83</sup> IPTV and cable service providers benefit from Media Bureau regulation as MVPDs.<sup>84</sup> We agree that IPTV providers should be subject to the same regulatory fees as cable providers.

36. We intend to revisit the issue of whether DBS providers should be included in this category; we are not including such additional services at this time.<sup>85</sup> Therefore, we adopt the proposal in the *FY 2013 NPRM* and broaden the cable television systems category to include IPTV in the new category: “cable television systems and Internet Protocol TV service providers.” This will continue to be calculated on a per subscriber basis. In this new category we assess regulatory fees on IPTV providers in the same manner as we assess fees on cable television providers; we are not stating that IPTV providers are cable television providers. As this is a “permitted amendment,” it will go into effect for FY 2014.<sup>86</sup>

### 3. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Booster

37. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class

A, and TV Translators/Boosters still remains voluntary with a transition date of September 1, 2015. In the context of regulatory fees, we have historically considered the digital transition only with respect to regulatory fees applicable to full-service television stations, and not to Low Power, Class A, and TV Translators/Boosters. Because the digital transition for these services is still voluntary, some of these facilities may transition from analog to digital service more rapidly than others. During this period of transition, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fee purposes, we will assess a fee for each facility operating either in an analog or digital mode. In instances in which a licensee is simulcasting in both analog and digital modes, a single regulatory fee will be assessed for the analog facility and its corresponding digital component, but not for both facilities. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

### 4. Commercial Mobile Radio Service (CMRS) Messaging

38. CMRS Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.<sup>87</sup> Initially, the Commission froze the regulatory fee for this fee category at the FY 2002 level to provide relief to the paging industry by setting an applicable rate of \$0.08 per subscriber beginning in FY 2003.<sup>88</sup> At that time we noted that CMRS Messaging units had significantly declined from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent.<sup>89</sup> Commenters argued that this decline in subscribership was not just a temporary phenomenon, but a lasting one. Commenters further argued that, because the messaging industry is spectrum-limited, geographically localized, and very cost sensitive, it is difficult for this industry to pass on

increases in costs to its subscribers.<sup>90</sup> In response to our *FY 2013 NPRM*, one commenter supported maintaining the CMRS Messaging fee rate at \$.08 per subscriber, but urged the Commission to adopt an even lower fee rate in the future, suggesting a ratio of 1 to 7 (messaging/paging monthly ARPU to wireless telephony ARPU) to calculate the messaging regulatory fee rate.<sup>91</sup>

39. The Commission has frozen the CMRS Messaging fee rate since FY 2003. By doing so, the Commission has provided the CMRS Messaging industry some level of regulatory fee stability. As our earlier discussion on FTE allocation has indicated, the fee burden of regulatory fee categories is determined by FTEs, and not by comparative ARPUs or other forms of measurement. By maintaining the CMRS Messaging rate at \$.08 per subscriber for a decade, the CMRS Messaging industry has in effect been paying a fee rate of .07 percent (.0007) of all fees, compared to its allocated share of .32 percent (.0032).<sup>92</sup> As in previous years, the Commission in FY 2013 will maintain the CMRS Messaging fee rate at \$.08 per subscriber. The Commission, however, will continue to examine the impact of regulatory fees on CMRS Messaging and similar declining industries.

### E. Excess Fees

40. Commenters recommend that the Commission obtain Congressional approval to refund excess regulatory fees or alternatively apply the excess fees to FY 2014 collections.<sup>93</sup> The Commission’s annual appropriations, since 2008, have prohibited the use of any excess fees from current or previous fees without an appropriation from Congress. Should Congress decide to examine this issue or any other issues regarding regulatory fees, the Commission is committed to providing whatever information they request.<sup>94</sup>

### F. Fee Decisions and Waiver Policies

41. The Commission received two unsolicited comments regarding its fee decisions and waiver policies. MMTC urges the Commission “to waive application fees for small businesses and nonprofits and to provide

<sup>82</sup> *FY 2013 NPRM*, 28 FCC Rcd at 7806, para. 37.

<sup>83</sup> See, e.g., ACA Comments at 2–9 (“The Commission is correct to assume that IPTV service providers should pay regulatory fees to support video-related activities of the Commission”); see also ACA Reply Comments at 1–6. *But see* Google Reply Comments at 2–3 (IPTV regulatory fees should be less than what cable operators pay because the Media Bureau has fewer responsibilities with regard to IPTV providers than with cable operators). While we agree that the services are not identical, and we are not categorizing IPTV as a cable television service, we are not persuaded that the relatively small difference from a regulatory perspective described by Google would justify a different regulatory fee methodology and rate.

<sup>84</sup> Some IPTV providers consider the service a “cable service” and currently pay the same regulatory fees as cable providers; others do not. ACA Comments at 7–8. MVPD, defined in section 76.1000(e) of our rules, is “an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming.” 47 CFR 76.1000(e).

<sup>85</sup> AT&T Comments at 4–5 (recommending a single MVPD fee category that would include all MVPDs); NCTA Reply Comments at 2–5 (proposes including all MVPDs); ACA Comments at 13–18 (same); DIRECTV Comments at 1–20 & Reply Comments at 2–10 (opposing including DBS in a MVPD category); EchoStar and DISH Comments at 18–20 & Reply Comments at 4–6 (same). This Report and Order does not adopt a MVPD fee category.

<sup>86</sup> 47 U.S.C. 159(b)(3).

<sup>87</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) (*FY 1997 Report and Order*).

<sup>88</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, 15992, para. 22 (2003) (*FY 2003 Report and Order*).

<sup>89</sup> *FY 2003 Report and Order*, 18 FCC Rcd at 15992, para. 21. The subscriber base in the paging industry declined 92 percent from 40.8 million to 3.2 million between FY 1997 and FY 2012, according to FY 2012 collection data as of Sept. 30, 2012.

<sup>90</sup> *FY 2003 Report and Order*, 18 FCC Rcd at 15992, para. 22.

<sup>91</sup> See CMA Comments at 1, 3, and 5.

<sup>92</sup> If the fee rate were not frozen at \$.08 per subscriber, the actual fee rate for the CMRS Messaging fee category would have been \$.39 per subscriber, thereby raising \$1,170,000 in projected revenues (.34% of all fees) compared with \$240,000 in projected revenues (.07%).

<sup>93</sup> See, e.g., USTA Comments at 8–9; Verizon Reply Comments at 1–2; SIA Reply Comments at 10.

<sup>94</sup> See GAO Report at pp. 44–45.

regulatory fee relief for certain broadcast entities.”<sup>95</sup> In addition, MMTC explains that the Commission has the authority to “waive, reduce, or defer payment of a fee in any specific instance of good cause shown, where such action would promote the public interest.”<sup>96</sup> MMTC contends that the Commission should adopt a rebuttable presumption that a certain class of entities need, and are eligible, for regulatory fee relief.<sup>97</sup> MMTC also urges the Commission to exercise its statutory authority and grant a one-year waiver of certain application fees.<sup>98</sup>

42. The issues raised by MMTC relating to application fees are beyond the scope of this proceeding. We emphasize that all waivers, including a reduction and deferral of fees, are considered on a case-by-case basis under the statute. These include instances in which financial hardship is presented, as well as instances in which the public interest will be promoted. The Commission can exercise some discretion in providing relief on waivers, but this relief can only be provided within the confines of the statutory law that governs that particular waiver.

43. The Commission also received a comment requesting the Commission publish redacted financial data from fee decisions.<sup>99</sup> Fireweed also contends that the Commission has hidden decisions from public view.<sup>100</sup> The Commission intends to consider this issue as it reviews its current policy of publishing fee decisions. However, the publishing of fee decisions, including redacted financial data, must adhere to the Commission’s privacy rules and guidelines.

44. Fireweed also contends that we should not require parties to support a waiver request with tax returns.<sup>101</sup> Fireweed has not, however, suggested an alternative method to substantiate financial hardship. Tax returns or audited financial statements are generally used by parties before the Commission to demonstrate financial hardship.

### G. Administrative Issues

45. In FY 2009, the Commission implemented several procedural changes that simplified the payment and reconciliation processes for FY 2009 regulatory fees. The Commission’s

current regulatory fee collection procedures can be found in the *Report and Order on Assessment and Collection of Regulatory Fees for FY 2012*.<sup>102</sup> In FY 2013, the Commission will continue to promote greater use of technology (and less use of paper) in improving our regulatory fee notification and collection process. These changes and their effective dates are discussed in more detail below. Specifically, beginning on October 1, 2013, in FY 2014, we will no longer accept checks and hardcopy Form 159 remittance advice forms to pay regulatory fee obligations. In FY 2014, we will also transfer electronic invoicing and receivables collection to the Treasury. Finally, in FY 2014, we will no longer mail out initial CMRS assessments, and will instead require licensees to log into the Commission’s Web site to view and revise their subscriber counts.

#### 1. Discontinuation of Mail Outs of Initial CMRS Assessments, FY 2014

46. In FY 2014, as part of the Commission’s effort to become more “paperless,” the Commission will no longer mail out its initial CMRS assessments but will require licensees to log into the Commission’s Web site to view and revise their subscriber counts. A system currently exists for providers to revise their CMRS subscriber counts electronically after the CMRS assessments are mailed, and it is possible that this system can be expanded to include letters that can be downloaded to serve as the initial CMRS assessment letter. The Commission will provide more details in future announcements as this system is modified to accommodate this task.

#### 2. Discontinuation of Paper and Check Transactions Beginning October 1, 2013 (FY 2014)

47. Together with the U.S. Department of Treasury, the Commission is taking further steps to meet the OMB Open Government Directive.<sup>103</sup> A component part of the Treasury’s current flagship initiative pursuant to this Directive is moving to a paperless Treasury, which includes related activities in both disbursing and collecting select federal government

payments and receipts.<sup>104</sup> Going paperless is expected to produce cost savings, reduce errors, and improve efficiencies across government. Accordingly, beginning on October 1, 2013, the Commission will no longer accept checks (including cashier’s checks) and the accompanying hardcopy forms (e.g., Form 159’s, Form 159–B’s, Form 159–E’s, Form 159–W’s) for the payment of regulatory fees. This new paperless procedure will require that all payments be made by online ACH payment, online credit card, or wire transfer. Any other form of payment (e.g., checks) will be rejected and sent back to the payor. So that the Commission can associate the wire payment with the correct regulatory fee information, an accompanying Form 159–E should still be transmitted via fax for wire transfers. This change will affect all payments of regulatory fees made on or after October 1, 2013.<sup>105</sup>

#### 3. Transfers to Treasury, FY 2014

48. Under section 9 of the Act, Commission rules, and the debt collection laws, a licensee’s regulatory fee is due on the first day of the fiscal year and payable at a date established by our annual regulatory fee Report and Order. The Commission will work with Treasury to facilitate end-to-end billing and collections capabilities for our receivables in the pre-delinquency stage. Under these revised procedures, the Commission will begin transferring appropriate receivables (unpaid regulatory fees) to Treasury at the end of the payment period instead of waiting for a period of 180 days from the date of delinquency to transfer a delinquent debt to Treasury for further collection action.<sup>106</sup> Accordingly, we anticipate that the transfer of FY 2013 debts to Treasury will occur much sooner than our current process. Regulatees, however, will not likely see any substantial change in the current procedures of how past due debts are to be paid. The Commission expects to modify its guidance and amend its rules accordingly.

<sup>104</sup> See U.S. Department of the Treasury, Open Government Plan 2.1, Sept. 2012.

<sup>105</sup> Payors should note that this change will mean that to the extent certain entities have to date paid both regulatory fees and application fees at the same time via paper check, they will no longer be able to do so as the regulatory fees payment via paper check will no longer be accepted.

<sup>106</sup> See 31 U.S.C. 3711(g); 31 CFR 285.12; 47 CFR 1.1917.

<sup>95</sup> MMTC Comments at 1.

<sup>96</sup> MMTC Comments at 4.

<sup>97</sup> MMTC Comments at 4–5.

<sup>98</sup> MMTC Comments at 5.

<sup>99</sup> Fireweed Comments at 6.

<sup>100</sup> Fireweed Comments at 7.

<sup>101</sup> Fireweed Comments at 8.

<sup>102</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, 27 FCC Rcd 8390, 8395–97, paras. 17–20, 24–26 (2012) (FY 2012 Report and Order).

<sup>103</sup> Office of Management and Budget (OMB) Memorandum M–10–06, Open Government Directive, Dec. 8, 2009; see also <http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>.

## V. Procedural Matters

### A. Assessment Notifications

#### 1. CMRS Cellular and Mobile Services Assessments

49. For regulatory fee collection in FY 2013, we will continue to follow our current procedures for conveying CMRS subscriber counts to providers. We will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast (NRUF) report that is based on “assigned” number counts that have been adjusted for porting to net Type 0 ports (“in” and “out”).<sup>107</sup> The letter will include a listing of the carrier’s Operating Company Numbers (OCNs) upon which the assessment is based.<sup>108</sup> The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

50. A carrier wishing to revise its subscriber count can do so by accessing Fee Filer after receiving its initial CMRS assessment letter. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.<sup>109</sup> The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse our initial disapproval of the provider’s revised count submission, we expect the fee payment to be based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts are final and are the basis upon which CMRS regulatory fees are expected to be paid. Providers can also view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

51. Because some carriers do not file the NRUF report, they may not receive

<sup>107</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005).

<sup>108</sup> *Id.*

<sup>109</sup> In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

an initial assessment letter. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.*, compute their subscriber counts as of December 31, 2012), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

### B. Payment of Regulatory Fees

#### 1. Lock Box Bank

52. All lock box payments to the Commission for FY 2013 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the fee season for collecting FY 2013 regulatory fees, regulatees can pay their fees by credit card through Pay.gov,<sup>110</sup> by check, money order, or debit card,<sup>111</sup> or by placing their credit card number on Form 159–E (Remittance Advice form) and mailing their fee and accompanying Form 159–E to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at <http://transition.fcc.gov/fees/regfees.html>.

#### 2. Receiving Bank for Wire Payments

53. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees

<sup>110</sup> In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the U.S. Treasury will reject credit card transactions greater than \$49,999.99 from a single credit card in a single day. This includes online transactions conducted via Pay.gov, transactions conducted via other channels, and direct-over-the-counter transactions made at a U.S. Government facility. Individual credit card transactions larger than the \$49,999.99 limit may not be split into multiple transactions using the same credit card, whether or not the split transactions are assigned to multiple days. Splitting a transaction violates card network and Financial Management Service (FMS) rules. However, credit card transactions exceeding the daily limit may be split between two or more different credit cards. Other alternatives for transactions exceeding the \$49,999.99 credit card limit include payment by check, electronic debit from your bank account, and wire transfer.

<sup>111</sup> In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the maximum dollar-value limit for debit card transactions will be eliminated. It should also be noted that only Visa and MasterCard branded debit cards are accepted by Pay.gov.

must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at <http://transition.fcc.gov/fees/wiretran.html>.

#### 3. De Minimis Regulatory Fees

54. Regulatees whose total FY 2013 regulatory fee liability, including all categories of fees for which payment is due, is less than \$10 are exempted from payment of FY 2013 regulatory fees.

#### 4. Two Additional Fee Categories Will Be Established as Bills in FY 2013

55. Presently, the Commission establishes bills for a select group of regulatory fee categories: ITSPs, Geostationary (GSO) and Non-Geostationary (NGSO) satellite space station licensees,<sup>112</sup> holders of Cable Television Relay Service (CARS) licenses, and Earth Station licensees.<sup>113</sup> In FY 2009, the Commission stopped sending hardcopy bills to licensees, and made them electronically available in Fee Filer, the Commission’s electronic filing and payment system. During the FY 2013 regulatory fee collection period, the Commission will expand its number of billing categories to include BRS/LMDS and Television Stations. There will be no change in the procedures of how BRS/LMDS and television station licensees view and pay their regulatory fees. The only noticeable difference will be that a bill number will be associated with each record for the BRS/LMDS and television station fee categories. This bill number will enable the Commission to

<sup>112</sup> Geostationary orbit space station (GSO) licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (NGSO) licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

<sup>113</sup> A bill is considered an account receivable in the Commission’s accounting system. Bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. See also 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

determine more quickly those entities that have not paid their FY 2013 regulatory fees. This initiative is part of the Commission's effort to streamline and expedite the process of regulatory fee collection and accounting.

#### 5. Standard Fee Calculations and Payment Dates

56. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2012 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2012. In instances where a permit or license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2012. In instances where a permit or license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.<sup>114</sup>

- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2012. The number of subscribers, units, or telephone numbers on December 31, 2012 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- The first eleven regulatory fee categories in our Schedule of Regulatory Fees (see Table 3 pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of

"small multi-year wireless" licenses that will be renewed or newly obtained in FY 2013.

- *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2012.<sup>115</sup> Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2012. In instances where a permit or license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations, and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2012. In instances where a permit or license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2012. In instances where a license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2013 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

- *International Services: Terrestrial and Satellite Services:* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2012 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their

affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits as of December 31, 2012. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2012, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2013 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

#### C. Enforcement

57. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.<sup>116</sup> Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules<sup>117</sup> and in the Debt Collection Improvement Act of 1996 (DCIA).<sup>118</sup> We also assess administrative processing charges on delinquent debts to recover additional costs incurred in pursuing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.<sup>119</sup> These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

<sup>115</sup> Cable television system operators should compute their number of basic 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 2012, rather than on a count as of December 31, 2012.

<sup>116</sup> 47 U.S.C. 159(c).

<sup>117</sup> See 47 CFR 1.1910.

<sup>118</sup> Delinquent debt owed to the Commission triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. See *Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR part 1, subpart O, Collection of Claims Owed the United States.

<sup>119</sup> 47 CFR 1.1940(d).

<sup>114</sup> Audio bridging services are toll teleconferencing services.

58. 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.<sup>120</sup> Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

59. As a final matter, we note that providing a 30 day period after **Federal Register** publication before this Report and Order becomes effective as required by 5 U.S.C. 553(d) will not allow sufficient time for the Commission to collect the FY 2013 fees before the end of FY 2013 on September 30, 2013. For this reason, pursuant to 5 U.S.C. 553(d)(3) the Commission finds there is good cause to waive the requirements of Section 553(d), and this *Report and Order* will become effective upon publication in the **Federal Register**. Because payments of the regulatory fees will not actually be due until the middle of September persons affected by this Order will still have a reasonable period in which to prepare to make their payments and thereby comply with the rules established herein.

**VI. Conclusion**

60. In this Report and Order we reallocate regulatory fees to more accurately reflect the subject areas worked on by current Commission FTEs for FY 2013. We consider this our first step toward reforming the regulatory fee process and will continue to refine our regulatory fee methodology to achieve

equitable results that are consistent with section 9 of the Act.

**Table 5—Factors, Measurements, and Calculations That Determines Station Signal Contours and Associated Population Coverages**

*AM Stations*

61. 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, phase, 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 augmented 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>121</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>122</sup> Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 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 principal community coverage area.

*FM Stations*

62. 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 principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>123</sup> The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

**Table 6—FY 2012 Schedule of Regulatory Fees**

The first eleven regulatory fee categories in the table below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	35
Microwave (per license) (47 CFR part 101) .....	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	70
Marine (Ship) (per station) (47 CFR part 80) .....	10
Marine (Coast) (per license) (47 CFR part 80) .....	50
General Mobile Radio Service (per license) (47 CFR part 95) .....	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) .....	15
PLMRS (Shared Use) (per license) (47 CFR part 90) .....	15
Aviation (Aircraft) (per station) (47 CFR part 87) .....	10
Aviation (Ground) (per license) (47 CFR part 87) .....	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	1.50
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27) .....	475
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) .....	475
AM Radio Construction Permits .....	550

<sup>120</sup> See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

<sup>121</sup> 47 CFR 73.150 and 73.152.

<sup>122</sup> See Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

<sup>123</sup> 47 CFR 73.313

Fee category	Annual regulatory fee (U.S. \$'s)
FM Radio Construction Permits .....	700
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	80,075
Markets 11–25 .....	73,475
Markets 26–50 .....	39,800
Markets 51–100 .....	20,925
Remaining Markets .....	5,825
Construction Permits .....	5,825
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	35,350
Markets 11–25 .....	32,625
Markets 26–50 .....	21,925
Markets 51–100 .....	12,750
Remaining Markets .....	3,425
Construction Permits .....	3,425
Satellite Television Stations (All Markets) .....	1,425
Construction Permits—Satellite Television Stations .....	895
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) .....	385
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	475
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.95
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00375
Earth Stations (47 CFR part 25) .....	275
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	132,875
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	143,150
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit) .....	.26
International Bearer Circuits—Submarine Cable .....	See Table Below

FY 2012 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 .....	\$725	\$600	\$550	\$625	\$700	\$875
25,001–75,000 .....	1,475	1,225	850	950	1,425	1,550
75,001–150,000 .....	2,200	1,525	1,125	1,600	1,950	2,875
150,001–500,000 .....	3,300	2,600	1,675	1,900	3,025	3,750
500,001–1,200,000 .....	4,775	3,975	2,800	3,175	4,800	5,525
1,200,001–3,000,00 .....	7,350	6,100	4,200	5,075	7,800	8,850
>3,000,000 .....	8,825	7,325	5,325	6,350	9,950	11,500

FY 2012 SCHEDULE OF REGULATORY FEES

[International Bearer Circuits—Submarine Cable]

Submarine cable systems (capacity as of December 31, 2011)	Fee amount	Address
< 2.5 Gbps .....	\$13,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	26,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	53,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps.	106,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater .....	212,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

**Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>124</sup> an Initial Regulatory Flexibility Analysis (IRFA) was

included in the *FY 2013 NPRM*. The Commission sought written public comment on the proposals in the *FY 2013 NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.<sup>125</sup>

*A. Need for, and Objectives of, the Report and Order*

2. In this Report and Order, we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year (FY) 2013 proceeding to collect \$339,844,000 in regulatory fees for FY 2013, pursuant to Section 9 of the Communications

<sup>124</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

<sup>125</sup> 5 U.S.C. 604.

Act <sup>126</sup> and the FY 2013 Continuing Appropriations Resolution.<sup>127</sup> These regulatory fees will be due in September 2013. Under section 9 of the Communications Act, regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.<sup>128</sup> In the *FY 2013 NPRM* we sought comment on our annual process of assessing regulatory fees to cover the Commission's costs to offset the Commission's FY 2013 appropriation, as directed by Congress. We also sought comment in the *FY 2013 NPRM* on reforming and revising our regulatory fee schedule for FY 2013 and beyond to take into account changes in the communications industry and changes in the Commission's regulatory processes and staffing in recent years.

3. The *FY 2013 NPRM* sought comment on, among other things, reallocating: (1) Direct FTEs <sup>129</sup> currently allocated to the Interstate Telecommunications Service Providers (ITSPs) fee category and other fee categories to reflect current workloads devoted to these subject areas; and (2) FTEs in the International Bureau to more accurately reflect the Commission's regulation and oversight of the International Bureau regulatees, because many of the International Bureau FTEs devote their time on issues international in nature, but not necessarily pertaining to the International Bureau regulatees. The *Report and Order* adopts these proposals, together with a limit on any increase in assessments to 7.5 percent to avoid fee shock to industry segments paying higher regulatory fees as a result of reallocation. In addition, for FY 2014, the *Report and Order* adds Internet Protocol TV (IPTV) to the cable television category because by assessing regulatory fees on cable television systems but not on IPTV, we may place

cable providers at a competitive disadvantage. The *Report and Order* also combines UHF and VHF fee categories, also for FY 2014, because after the digital conversion there was no longer a basis in which to assess a higher regulatory fee on VHF channels.

4. The *Report and Order* also clarifies that licensees of Digital Low Power, Class A, and TV Translators/Boosters should pay only one regulatory fee on their analog or digital station, but not both. During the transition from analog to digital, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fee purposes, the Commission will assess a fee for each facility operating either in an analog or digital mode. In instances in which a licensee is simulcasting in both analog and digital modes, a single regulatory fee will be assessed for the analog facility and its corresponding digital component, but not for both facilities. In addition, the *Report and Order* announces that effective in FY 2014 all regulatory fee payments must be made electronically. The *Report and Order* also states that beginning in FY 2014 the Commission will no longer mail out initial regulatory fee assessments to CMRS licensees. Finally, the Commission will refer to the Department of the Treasury end-to-end billing and collection beginning in FY 2014.

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

5. Fireweed Communications and Jeremy Lansman filed joint comments to the IRFA. They contend that the proposals in the *FY 2013 NPRM* greatly increase the reporting burden on small broadcasting entities requesting a fee waiver.<sup>130</sup> They also contend that the IRFA does not describe significant alternatives to the proposed rules or exemptions for small entities.<sup>131</sup> The Schedule of Regulatory Fees to be paid by radio and television broadcasters, which appears at 47 CFR 1153, takes into account the size of the market and/or size of the population served by the various classes of television and radio stations. Thus, consideration for smaller stations is already built in to the Commission's regulatory fee structure. Any station experiencing financial hardship from the fee increase adopted today can file for a waiver pursuant to

47 CFR 1.116. This *Report and Order* makes no change in the fee waiver procedure for any entities seeking a waiver. We have not proposed any changes in our regulatory fee process for small entities. We have not increased the reporting burden on small entities in this proceeding. These commenters appear to be seeking a change in the waiver process, which is outside the scope of this proceeding.

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

6. 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>132</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>133</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>134</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>135</sup> Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.<sup>136</sup>

8. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.<sup>137</sup> Thus, under this size standard, the majority of firms can be considered small.

9. Local Exchange Carriers (LECs). Neither the Commission nor the SBA

<sup>126</sup> 47 U.S.C. 159(a).

<sup>127</sup> In FY 2013, the Consolidated and Further Continuing Appropriations Act, Public Law 113-6 (2013) at Division F authorizes the Commission to collect offsetting regulatory fees at the level provided to the Commission's FY 2012 appropriation of \$339,844.00. See Financial Services and General Government Appropriations Act, 2012, Division C of Public Law 112-74, 125 Stat. 108-9 (2011).

<sup>128</sup> 47 U.S.C. 159(a).

<sup>129</sup> One FTE, typically called a "Full Time Equivalent," is a unit of measure equal to the work performed annually by a full time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget. Any reference to FTE or "Full Time Employee" used herein refers to such Full Time Equivalent.

<sup>130</sup> Comments of Fireweed Communications and Jeremy Landsman at 2.

<sup>131</sup> *Id.*

<sup>132</sup> 5 U.S.C. 603(b)(3).

<sup>133</sup> 5 U.S.C. 601(6).

<sup>134</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>135</sup> 15 U.S.C. 632.

<sup>136</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," [http://www.sba.gov/sites/default/files/FAQ\\_Sept\\_2012.pdf](http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf).

<sup>137</sup> See *id.*

has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>138</sup> According to Commission data, census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.<sup>139</sup> The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *FY 2013 NPRM*.

10. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable 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>140</sup> According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>141</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>142</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the *FY 2013 NPRM*.

11. Competitive Local Exchange Carriers (Competitive LECs), 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>143</sup> According to Commission data, 1,442 carriers reported that they were engaged in the

provision of either competitive local exchange services or competitive access provider services.<sup>144</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>145</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>146</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>147</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>148</sup> 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 rules adopted pursuant to the proposals in this *FY 2013 NPRM*.

12. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically applicable to interexchange services. The applicable size standard under SBA rules is for the Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>149</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>150</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>151</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *FY 2013 NPRM*.

13. 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>152</sup> Census data for 2007 show that 1,716 establishments provided resale services during that year. Of that number, 1,674 operated with fewer than 99 employees and 42

operated with more than 100 employees.<sup>153</sup> Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>154</sup> Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>155</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the *FY 2013 NPRM*.

14. 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>156</sup> Census data for 2007 show that 1,716 establishments provided resale services during that year. Of that number, 1,674 operated with fewer than 99 employees and 42 operated with more than 100 employees.<sup>157</sup> Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>158</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>159</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this *FY 2013 NPRM*.

15. 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>160</sup> Census data for 2007 show that 1,716 establishments provided resale services during that year. Of that number, 1,674 operated with fewer than 99 employees and 42 operated with more than 100

<sup>153</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSZ2&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ2&prodType=table).

<sup>154</sup> See *Trends in Telephone Service*, at tbl. 5.3.  
<sup>155</sup> *Id.*

<sup>156</sup> 13 CFR 121.201, NAICS code 517911.

<sup>157</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSZ2&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ2&prodType=table).

<sup>158</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>159</sup> *Id.*

<sup>160</sup> 13 CFR 121.201, NAICS code 517911.

<sup>138</sup> 13 CFR 121.201, NAICS code 517110.

<sup>139</sup> See *id.*

<sup>140</sup> 13 CFR 121.201, NAICS code 517110.

<sup>141</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>142</sup> *Id.*

<sup>143</sup> 13 CFR 121.201, NAICS code 517110.

<sup>144</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>145</sup> *Id.*

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

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> 13 CFR 121.201, NAICS code 517110.

<sup>150</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>151</sup> *Id.*

<sup>152</sup> 13 CFR 121.201, NAICS code 517911.

employees.<sup>161</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>162</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>163</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the *FY 2013 NPRM*.

16. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>164</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.<sup>165</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>166</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>167</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *FY 2013 NPRM*.

17. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>168</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless

Telecommunications.<sup>169</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>170</sup> For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.<sup>171</sup> Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.<sup>172</sup> Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

18. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>173</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>174</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

19. Cable Television and other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

<sup>169</sup> U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging," available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517211&search=2002%20NAICS%20Search>; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications," available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517212&search=2002%20NAICS%20Search>.

<sup>170</sup> 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>171</sup> U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210" (issued Nov. 2010).

<sup>172</sup> *Id.* Available 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 for firms with "100 employees or more."

<sup>173</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>174</sup> *Id.*

Transmission facilities may be based on a single technology or a combination of technologies."<sup>175</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>176</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 had more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the *FY 2013 NPRM*.

20. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.<sup>177</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>178</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>179</sup> Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.<sup>180</sup> Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the *FY 2013 NPRM*.

21. All Other Telecommunications. The Census Bureau defines this industry as including "establishments primarily engaged in providing specialized

<sup>175</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search>.

<sup>176</sup> 13 CFR 121.201, NAICS code 517110.

<sup>177</sup> See 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92–266, 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

<sup>178</sup> These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

<sup>179</sup> See 47 CFR 76.901(c).

<sup>180</sup> WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

<sup>161</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ2&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table).

<sup>162</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>163</sup> *Id.*

<sup>164</sup> 13 CFR 121.201, NAICS code 517110.

<sup>165</sup> *Id.*

<sup>166</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>167</sup> *Id.*

<sup>168</sup> 13 CFR 121.201, NAICS code 517210.

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>181</sup> The SBA has developed a small business size standard for this category; that size standard is \$30.0 million or less in average annual receipts.<sup>182</sup> According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year.<sup>183</sup> Of these, 2478 establishments had annual receipts of under \$10 million and 145 establishments had annual receipts of \$10 million or more.<sup>184</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, some small businesses whose primary line of business does not involve provision of communications services hold FCC licenses or other authorizations for purposes incidental to their primary business. We do not have a reliable estimate of how many of these entities are small businesses.

*D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

22. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

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

23. The RFA requires an agency to describe any significant alternatives that

it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>185</sup>

24. This Report and Order does not adopt any new reporting requirements. Therefore no adverse economic impact on small entities will be sustained based on reporting requirements. There may be a regulatory fee increase on small entities, in some cases and in some industries, but if so it would be specifically in furtherance of the reform measures proposed in the Notice to better align regulatory fees with Commission FTEs in core bureaus, as required under section 9 of the Act. We are mitigating fee increases to small entities, and other entities, by, for example, limiting or capping the annual increase in regulatory fees to 7.5 percent. Absent a cap, the cable fee would increase approximately an additional 15 percent. In keeping with the requirements of the Regulatory Flexibility Act, in paragraphs 10 to 28 of this Report and Order, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. In addition, the Commission's rules provide a process by which regulatory fee payors may seek waivers or other relief on the basis of financial hardship. 47 CFR 1.1166

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

26. None.

**VII. Ordering Clauses**

63. Accordingly, *it is ordered* that, 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 Report and Order is hereby adopted.

64. *It is further ordered* that, as provided in paragraph 59, this Report and Order shall be effective upon publication in the Federal Register.

65. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**List of Subjects in 47 CFR Part 1**

Practice and procedure.  
Federal Communications Commission.  
**Gloria J. Miles,**  
*Federal Register Liaison.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i) , 154(j) , 155, 157, 225, 303(r) , 309, and 310. Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96.

■ 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) .....	\$40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
220 MHz Nationwide (a) New, Renew/Mod (FCC 601 & 159).	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

<sup>181</sup> U.S. Census Bureau, “2007 NAICS Definitions: 517919 All Other Telecommunications,” available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

<sup>182</sup> 13 CFR 121.201, NAICS code 517919.

<sup>183</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United

States: 2007 NAICS Code 517919” (issued Nov. 2010).

<sup>184</sup> *Id.*

<sup>185</sup> 5 U.S.C. 603(c)(1)–(c)(4).

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
(c) Renewal Only (FCC 601 & 159) .....	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
2. Microwave (47 CFR Pt. 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159) .....	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
3. 218-219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159) .....	75.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	75.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	75.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	75.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
4. Shared Use Services		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz).		
(a) New, Renew/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
General Mobile Radio Service.		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159).	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Rural Radio (Part 22).		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO, 63197-9000
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Marine Coast.		
(a) New Renewal/Mod (FCC 601 & 159) .....	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000
Aviation Ground.		
(a) New, Renewal/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Only) (FCC 601 & 159) ....	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
Marine Ship.		
(a) New, Renewal/Mod (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000
Aviation Aircraft.		
(a) New, Renew/Mod (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(c) Renewal Only (FCC 605 & 159) .....	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159) .....	1.61	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.61	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
6. CMRS Cellular/Mobile Services (per unit) (FCC 159).	.18 <sup>2</sup>	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.
7. CMRS Messaging Services (per unit) (FCC 159) .....	.08 <sup>3</sup>	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.
8. Broadband Radio Service (formerly MMDS and MDS) .....	510	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.
9. Local Multipoint Distribution Service	510	FCC, P.O. Box 979084, St. Louis, MO 63197-9000.

<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 .....	\$775	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,550	
75,001-150,000 population .....	2,325	
150,001-500,000 population .....	3,475	
500,001-1,200,000 population .....	5,025	
1,200,001-3,000,000 population .....	7,750	
>3,000,000 population .....	9,300	
2. <i>AM Class B</i>		
<=25,000 population .....	645	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,300	
75,001-150,000 population .....	1,625	
150,001-500,000 population .....	2,750	
500,001-1,200,000 population .....	4,225	
1,200,001-3,000,000 population .....	6,500	
>3,000,000 population .....	7,800	
3. <i>AM Class C</i>		
<=25,000 population .....	590	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	900	
75,001-150,000 population .....	1,200	
150,001-500,000 population .....	1,800	
500,001-1,200,000 population .....	3,000	
1,200,001-3,000,000 population .....	4,500	
>3,000,000 population .....	5,700	
4. <i>AM Class D</i>		
<=25,000 population .....	670	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,000	
75,001-150,000 population .....	1,675	
150,001-500,000 population .....	2,025	
500,001-1,200,000 population .....	3,375	
1,200,001-3,000,000 population .....	5,400	
>3,000,000 population .....	6,750	
5. AM Construction Permit .....	590	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
6. <i>FM Classes A, B1 and C3</i>		
<=25,000 population .....	750	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,500	
75,001-150,000 population .....	2,050	
150,001-500,000 population .....	3,175	
500,001-1,200,000 population .....	5,050	
1,200,001-3,000,000 population .....	8,250	
>3,000,000 population .....	10,500	
7. <i>FM Classes B, C, C0, C1 and C2</i>		
<=25,000 population .....	925	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population .....	1,625	
75,001-150,000 population .....	3,000	
150,001-500,000 population .....	3,925	
500,001-1,200,000 population .....	5,775	
1,200,001-3,000,000 population .....	9,250	
>3,000,000 population .....	12,025	
8. FM Construction Permits .....	750	FCC, Radio, P.O. Box 979084, St. Louis, MO, 3197-9000.
TV (47 CFR, part 73) VHF Commercial		
1. Markets 1 thru 10 .....	86,075	FCC, TV Branch, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25 .....	78,975	
3. Markets 26 thru 50 .....	42,775	
4. Markets 51 thru 100 .....	22,475	
5. Remaining Markets .....	6,250	
6. Construction Permits .....	6,250	
UHF Commercial		
1. Markets 1 thru 10 .....	38,000	FCC,UHF Commercial, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25 .....	35,050	
3. Markets 26 thru 50 .....	23,550	
4. Markets 51 thru 100 .....	13,700	
5. Remaining Markets .....	3,675	
6. Construction Permits .....	3,675	
Satellite UHF/VHF Commercial		
1. All Markets .....	1,525	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Construction Permits .....	960	

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74).	410	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197-9000.
Broadcast Auxiliary .....	10	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197-9000.

■ 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). Carriers	\$20.00	FCC, P.O. Box 979097, St. Louis, MO 63197-9000.
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A).	.00347	FCC, Carriers P.O. Box 979084, St. Louis, MO 63197-9000.

■ 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 .....	\$510	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Cable TV System (per subscriber) .....	1.02	

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

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

(a) The following schedule applies for the listed services:

Fee category	Fee amount	Address
Space Stations (Geostationary Orbit) .....	\$139,100	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
Space Stations (Non-Geostationary Orbit) .....	149,875	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	275	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

(b)(1) *International Terrestrial and Satellite*. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which

includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for

these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

International terrestrial and satellite (capacity as of December 31, 2012)	Fee amount	Address
Terrestrial Common Carrier .....	\$0.27 per 64 KB Circuit .....	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000
Satellite Common Carrier .....		
Satellite Non-Common Carrier .....		

(c) *Submarine cable*. Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems

operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year. Payment, if mailed, shall be sent to:

FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

Submarine cable systems (capacity as of Dec. 31, 2012)	Fee amount	Address
< 2.5 Gbps .....	\$13,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
2.5 Gbps or greater, but less than 5 Gbps .....	27,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
5 Gbps or greater, but less than 10 Gbps .....	54,425	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
10 Gbps or greater, but less than 20 Gbps .....	108,850	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.
20 Gbps or greater .....	217,675	FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000.

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Chapter 2**

**Defense Federal Acquisition Regulation Supplement; Appendix A, Armed Services Board of Contract Appeals, Part 1—Charter**

*CFR Correction*

■ In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201 to 299), revised as of October 1, 2012, on page 573, in Appendix A to Chapter 2, add two lines to the list immediately preceding Part 1—Charter to read as follows:

**Appendix A to Chapter 2—Armed Services Board of Contract Appeals**

\* \* \* \* \*

**Armed Services Board of Contract Appeals**

\* \* \* \* \*

Revised 27 June 2000.

Revised 14 May 2007.

\* \* \* \* \*

[FR Doc. 2013-20699 Filed 8-22-13; 8:45 am]  
**BILLING CODE 1505-01-D**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 365**

**Transfers of Operating Authority Registration**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Interpretation.

**SUMMARY:** FMCSA provides notice concerning the Agency’s new process and legal interpretation for recording transfers of operating authority

registration by non-exempt for-hire motor carriers, property brokers and freight forwarders.

**DATES:** The process and interpretation are effective October 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Secrist, Office of Registration and Safety Information, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Telephone (202) 385-2367 or *FMCSAOATransfers@dot.gov*. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

As part of an ongoing assessment of Agency processes and its retrospective review of regulations, *see* E.O. 13563, 76 FR 3221 (Jan. 21, 2011); 5 U.S.C. 610, FMCSA reexamined its legal authority for continued enforcement of 49 CFR part 365, subpart D, “Transfer of Operating Rights under 49 U.S.C. 10926.” As discussed in the Supplemental Notice of Proposed Rulemaking for the Unified Registration System (URS), 76 FR 66506, 66511 (October 26, 2011), and in the URS Final Rule, published elsewhere in today’s **Federal Register**, Congress repealed former 49 U.S.C. 10926 as part of the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (Dec. 29, 1995) (ICCTA), and with it the express authority previously granted to FMCSA’s predecessor agency (in this case, the former Interstate Commerce Commission (ICC)) to review and approve transfers of operating authority.

However, Congress did not prohibit the practice—long recognized under the ICC regulation—of transferring operating authority rights, nor did it rescind subpart D or otherwise prohibit the Agency from continuing to review and approve such transfers. The ICCTA and its legislative history were silent regarding the continued effect of the regulatory provisions then in place for transfers of operating rights, and the

provisions have remained substantially unchanged since 1996, in 49 CFR part 365, subpart D. Moreover, the Agency continues to have a duty under 49 U.S.C. 13902 to register motor carriers that are fit, willing, and able to comply with applicable statutory and regulatory requirements. And transfer approvals historically have been a reasonable and effective part of that program.

As a result of the highly specific and more limited nature of operating authority, which historically was defined by such factors as restricted commodity and territorial scope, specified regular route designations for passenger carriers, and types of service such as contract and common carrier operations, the regulated community came to treat operating authority as an asset of commercial value. Essentially operating authority was recognized as a property right that could be bought and sold, and thus transferred among disparate controlling interests, without disrupting the continuity of regulatory oversight or even warranting a change in registration number to reflect an ownership change. Indeed, when FMCSA’s predecessor Agency, the Federal Highway Administration, proposed removing the 49 CFR part 365, subpart D, transfer regulations in response to the ICCTA’s repeal of 49 U.S.C. 10926 (63 FR 7362, February 13, 1998), a number of industry commenters objected, noting that transfers were an institutionalized part of the regulatory environment that minimized registration costs and contributed to oversight and tracking of the carrier population. *See* 70 FR 28990, 28995-28996 (May 19, 2005). FMCSA subsequently withdrew the proposal to remove the transfer regulations in 49 CFR part 365, subpart D (66 FR 27059, May 16, 2001). But when the Agency again proposed in the URS rulemaking to eliminate the part 365 transfer approval process (70 FR 28990, 28996, May 19, 2005), the public comment record again acknowledged that operating authority transfers were an established industry practice and