

12866. While this proposal is not subject to E.O.13045, we note that this proposed water quality criteria is selected to be protective of sensitive subpopulations, including children.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: March 27, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble title 40, chapter I part 131 of

the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.36 is amended:

a. The table in paragraph (b)(1) is amended by revising the entries for 119, 120, 121, 122, 123, 124, 125, by adding an entry and revising the total number of criteria at the end of the table, and

adding footnote q. (Footnotes d, and g are republished for the convenience of the reader.)

b. Paragraph (d)(3)(ii) is amended by revising entries "B2" and "C2" under the heading "Applicable Criteria".

c. Paragraph (d)(9)(ii) is amended by revising entry "B2" under the heading "Applicable Criteria" to read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(b)(1) * *

A		B Freshwater		C Saltwater		D Human health (10 ⁶ risk for carcinogens for consumption of:	
(No.) Compound	CAS No.	Criterion maximum conc. d (µg/L) B1	Criterion continuous conc. d (µg/L) B2	Criterion maximum conc. d (µg/L) C1	Criterion continuous conc. d (µg/L) C2	Water & organism (µg/L) D1	Organisms only (µg/L) D2
119 PCB-1242	53469219 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
120 PCB-1254	11097691 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
121 PCB-1221	11104282 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
122 PCB-1232	11141165 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
123 PCB-1248	12672296 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
124 PCB-1260	11096825 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
125a PCB-1016	12674112 .....	.....	0.014 g .....	.....	0.03 g .....	.....	.....
125b Polychlorinated biphenyls (PCBs) .....	.....	.....	0.014 g .....	.....	0.03 g	0.00017 q	0.00017 q
Total No. of Criteria (h)= .....	.....	24	29	23	27	85	84

Footnotes:

d. Criteria Maximum Concentration (CMC) = the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (1-hour average) without deleterious effects. Criteria Continuous Concentration (CCC) = the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. µg/L = micrograms per liter.

g. Aquatic life criteria for these compounds were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV) which by the 1980 Guidelines are instantaneous values as contrasted with a CMC which is a one-hour average.

q. This criterion applies to total PCBs (i.e., the sum of all congener or all isomer analyses).

(d) * * *

(3) * * *

(ii) * * *

(ii) * * *

Use classification	Applicable criteria
* * *	Column B2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a.
* * *	Column C2—all except #105, 107, 108, 111, 112, 113, 115, 117, 118, 119, 120, 121, 122, 123, 124, and 125a.

Use classification	Applicable criteria
* * *	Column B2—all except #9, 13, 105, 107, 108, 111–113, 115, 117, 119–125a and 126; and
* * *	* * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–36; FCC 98–40]

Assessment and Collection of Regulatory Fees For Fiscal Year 1998

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1998. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1998

(9) * * *

sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of

reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due April 22, 1998 and Reply Comments are due May 4, 1998.

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

SUPPLEMENTARY INFORMATION:

Adopted: March 13, 1998
Released: March 25, 1998.

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Attachment F—Schedule of Regulatory Fees

Attachment G—Comparison Between FY 1997 and FY 1998 Fees

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Attachment I—Description of FCC Activities

Attachment J—Factors, measurements and calculations that go into determining station signal contours and associated population coverages

I. Introduction

1. By this *Notice of Proposed Rulemaking*, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for

Fiscal Year (FY) 1998. See 47 U.S.C. 159 (a).

2. Congress has required that we collect \$162,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1998. See Public Law 105-119 and 47 U.S.C. 159(a)(2). This amount is \$10,000,000 or nearly 7% more than the amount that Congress designated for recovery through regulatory fees for FY 1997. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97-215, released June 26, 1997, 62 FR 37408 (July 11, 1997). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to simplify and streamline the Fee Schedule. See 47 U.S.C. 159(b)(3).

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to

a fee, consistent with sections 159(b)(2) and (3). In addition, we are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. See 47 CFR 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. See 47 U.S.C. 159(a). See Attachment I for a description of these activities. In our *FY 1994 Fee Report and Order*, 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress. See 47 U.S.C. 159(b), (f)(1). Subsequently, in

our FY 1995, FY 1996, and FY 1997 *Fee Reports and Orders*, 60 FR 34004 (June 29, 1995), 61 FR 36629 (July 12, 1996), and 62 FR 37408 (July 11, 1997), we modified the Schedule to increase by approximately 93 percent, 9 percent and 21 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995, FY 1996 and FY 1997. Also, in our FY 1995, FY 1996, and FY 1997 *Fee Reports and Orders*, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. See 47 CFR §§ 1.1151 *et seq.*

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. See 47 U.S.C. 159(b)(2), (b)(3). Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. See 47 U.S.C. 159(b)(2).

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." See 47 U.S.C. 159(b)(3).

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. See 47 U.S.C. 9(i). For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology enables us to develop regulatory fees which more closely reflect our costs of regulation and also allows us to make annual revisions to our fees based to the fullest

extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. See 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Summary of FY 1998 Fee Methodology

8. As noted above, Congress has required that the Commission recover \$162,523,000 for FY 1998 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. See 47 U.S.C. 159(a).

9. In developing our proposed FY 1998 fee schedule, we first determined that we would continue to use the same general methodology as we used in developing fees for FY 1997. We next estimated payment units¹ for FY 1998 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1997 fees. Next, we compared this revenue amount to the \$162,523,000 that Congress has required us to collect in FY 1998 and pro-rated the overage among all the existing fee categories.

10. We then separately projected revenue requirements in each service category using data generated by our cost accounting system and established a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1998 fees had remained at FY 1997 levels (adjusted only for changes in volume and the increase required by Congress). This methodology, described in our FY 1997 *Report and Order* at paragraph 35, reduces fees for services whose regulatory costs have declined and increases fees for services experiencing higher regulatory costs in order to continue to eliminate disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years. The 25 percent limitation minimizes the impact of unexpected substantial increases to fees which could affect the well-being of licensees.

11. Once we established our tentative FY 1998 fees, we evaluated proposals made by Commission staff concerning other adjustments to the Fee Schedule

and to our collection procedures. These proposals are discussed in paragraphs 20-30 and are factored into our proposed FY 1998 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1998.² In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 1998 regulatory fees.

B. Development of FY 1998 Fees

i. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1998, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1997 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.³

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1997 fee amounts in each fee category to determine how much revenue we would collect without any change to the FY 1997 Schedule of Regulatory Fees. The amount of revenue we would collect without changes in the fee schedule is approximately \$171.5 million. This amount is approximately \$9 million more than the amount the Commission is required to collect in FY 1998. We then adjusted these revenue requirements for each fee category on a

² We also will incorporate a similar Attachment in the *Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order*.

³ It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately seven percent in FY 1998 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

¹ Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category at the \$162,523,000 level required by Congress for FY 1998. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

iii. Calculation of Regulatory Costs

15. In accordance with section 159(i) of the Act, the Commission utilizes a cost accounting system designed, in part, to provide data which helps to ensure that fees closely reflect our actual costs of regulation for each service category. The Commission's cost accounting system accumulates both personnel and non-personnel costs on a service-by-service basis and is described in detail in our *FY 1997 Report and Order* at paragraph 12.

16. In order to utilize actual costs for fee development purposes, we first add indirect support costs to direct costs⁴ and then adjust the results to approximate the amount of revenue that Congress requires us to collect in FY 1998 (\$162,523,000).⁵ In effect, we proportionally adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1996 through September 30, 1997 (Fiscal Year 1997) among all the fee categories so that total costs approximated \$162,523,000. For fee categories where fees are further differentiated by market (e.g., Markets 1–10 under the general VHF and UHF Commercial Television fee categories), we distributed the costs to each market group by maintaining the same ratios between the market groups as between the revenue requirements in the FY 1997 fee schedule. The results of these calculations are shown in detail in Attachment D and represent our best

estimate of actual total attributable costs relative to each fee category for FY 1998.

iv. Establishment of 25% Revenue Ceilings

17. Our next step was to establish a ceiling of 25 percent on the increase in the revenue requirement of each fee category (over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts) using the same methodology we described in detail in our *FY 1997 Report and Order*. Capping each fee category's revenue requirement at no more than a 25 percent increase enables us to continue the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs.⁶

18. As noted in our *FY 1997 Report and Order*, an important consideration in utilizing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full \$162,523,000 in FY 1998 regulatory fees, the additional revenue (\$34,456,724) that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.⁷ We believe, however, that the public interest is best served by this methodology. To do otherwise would subject payers in some fee categories to unexpected major fee increases which could severely impact the economic well being of certain licensees. Attachment E displays the step-by-step process we used to calculate adjusted

revenue requirements for each fee category for FY 1998, including the reallocation of revenue requirements resulting from the application of our revenue ceilings.⁸

v. Recalculation of Fees

19. Once we determined the amount of fee revenue that it is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. See Attachment E.

vi. Proposed Changes to Fee Schedule

20. We examined the results of our calculations made in paragraphs 15–19 to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we are proposing the following changes to our Fee Schedule:

a. *Commercial AM & FM Radio*. 21. For FY 1997 we established a revised methodology for determining AM & FM radio regulatory fees. This new methodology relies upon a radio station's calculated field strength signal contour overlaid upon U.S. Census data to obtain an estimate of population coverage for each station.⁹ The calculated population coverages are then used along with a station's class to

⁸ Application of the 25% ceiling was accomplished by choosing a "target" fee revenue requirement for each individual fee category. This "target" was either the actual calculated (cost-based) revenue requirement (for those categories at or below the 25% ceiling) or, in the case where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After three iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

⁹ In FY 1997 we determined that the signal contour for AM radio stations would be based upon a calculated signal strength of 0.5 mV/m from the transmitter location. For Class B FM stations the contour was based upon a signal strength of 54 dBuV/m from the transmitter location and for Class B1 FM stations the contour was based upon a signal strength of 57 dBuV/m. For all other FM Classes, a 60 dBuV/m contour was used. Attachment J describes in detail the factors, measurements and calculations that go into determining station signal contours and associated population coverages.

⁴ One feature of our cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

⁵ Congress' estimate of costs to be recovered through regulatory fees is generally determined ten to twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1997 will not equal exactly the amount Congress has designated for collection for FY 1998.

⁶ We are not suggesting that fee increases are limited to a 25 percent increase over the FY 1997 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for projected FY 1998 payment units and the proportional share of the 6.56 percent increase in the amount that Congress is requiring us to collect. Thus, FY 1998 fees may increase more than 25 percent over FY 1997 fees depending upon the number of payment units. We are also not suggesting that this methodology will always result in a continuous closing of an existing gap between costs and fees designed to recover these costs. Since actual costs for a fee category may increase or decrease in consecutive years, the gap could either close or widen depending upon whether or not actual costs go down or up and by how much.

⁷ Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

develop a range of fees for both AM and FM radio stations.

22. Although the calculated contours used in FY 1997 are consistent with Commission radio station signal protection policies and rules, we received several complaints from licensees stating that the contours exaggerated actual market areas and populations served. In several instances licensees complained that small, rural stations whose contours, at the fringe, intersected major metropolitan areas, were attributed with populations far in excess of what they considered to be their primary or even secondary market areas. See, for example, letters from KTXC, dated September 10, 1997; Music Express Broadcasting Corporation of Northeast Ohio, dated August 28, 1997; and Martin Broadcasting Company, dated August 26, 1997. To alleviate this disparity and to ensure that radio stations are assigned population coverage figures more in line with their actual market areas, we are proposing for FY 1998 to utilize the same general methodology for determining regulatory fees as we introduced in FY 1997, but to change the applicable signal contours to 5 mV/m for AM radio stations and 70 dBuV/m for FM radio stations. These reduced contours are generally consistent with the city grade contours of radio stations and should limit population coverage to only those populations actually within a station's primary local market area. We seek comment on this proposal. It should be noted that population coverage is only one factor used to determine radio station regulatory fees. For example, the number of stations claiming non-profit exemption from fees impacts the number of stations which may be assessed regulatory fees. Additionally, the overall amount that Congress requires the Commission to collect and the actual costs attributable to radio station regulation also influence the final determination of fee amounts. The following paragraphs explain in detail the development of our proposed fee schedule for AM and FM radio stations.

23. We calculated the revenue requirements for each category of station (e.g., AM, FM or construction permit) under our existing methodology for assessing radio station fees as shown in Attachment E. In order to consider both

population and class of station, we then multiplied the population served by the same ratio between the individual classes as compared to the original FY 1994 Schedule to determine the weighted population. The weighted approach also streamlines the schedule by allowing us to combine AM and FM stations into a single "radio" category.

24. Our next step was to sort the data by compiling a list of every AM and FM station in descending order by class-weighted population. Next, we determined actual fees for each station. We designed a schedule which would place stations in wide bands based upon the classes of station and total populations served, with different fees for each band. We established the ranges for the schedule by first proposing a minimum and a maximum fee amount. In setting a minimum fee, we are proposing that it should be no less than the AM Construction Permit fee which we calculated in Attachment E to be \$235. Therefore, we set the lowest radio fee at \$250. In order to prevent the fee from becoming too great a burden for any licensee, we are proposing to limit the maximum fee to \$2,500. At the same time, we are proposing to retain the number of actual fee classifications at ten as in our *FY 1997 Report and Order*. This allowed us to establish fee classifications in \$250 increments, with each increment containing the same number of stations, resulting in a more equitable fee schedule while keeping the size of the schedule relatively manageable.¹⁰ The resulting schedule of regulatory fees for radio stations (both AM and FM) would read:

Classification group	Number of stations	Fee
1	878	\$2,500
2	878	2,250
3	878	2,000
4	878	1,750
5	878	1,500
6	878	1,250
7	878	1,000
8	878	750
9	878	500
10	873	250

25. This schedule, which we propose today, results in: (1) same class stations in different size cities generally having

different fees, (2) different class stations in the same city generally having different fees, and (3) same class stations in the same city generally having the same fee. In addition, it is generally true that in using this methodology: (1) larger stations and those located in larger metropolitan areas tend to be assessed higher fees and (2) small stations and those located in rural areas tend to be assessed lower fees. This proposed fee schedule achieves the objectives of both assessing fees based on class of station and populations served, thereby providing a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas. Moreover, if a licensee believes that it has been improperly placed in a particular fee classification group or that it will suffer undue financial hardship from the fee assessment, our rules provide for waiver, reduction or deferral of a fee as described in § 1.1166 of our rules. 47 U.S.C § 1.1166.

b. Alternative Proposed Schedule for AM and FM Radio Stations.—26. We also received a number of complaints that licensees could not easily see how their station class was used in determining their regulatory fee for FY 1997. Further, several licensees expressed the view that there was not enough difference between the fees imposed on stations in the largest population centers and those below. See, for example, letter from Heckler Broadcasting, Inc. received October 2, 1997; and Petition for Reduction of Regulatory Fee filed September 18, 1997, from Family Communications, Inc. The alternative schedule shown below addresses both of these concerns. However, it should be noted that although the ratios between the classes in the alternative schedule would no longer match the original schedule adopted by Congress, which was implemented in our *FY 1994 Report and Order*, it addresses licensee complaints that the differentiations between the size of service and fee assessed in our existing schedule are inequitable. We invite public comment on whether this alternative schedule for AM and FM Radio should be implemented instead of the one proposed in paragraph 24.

AM RADIO STATION REGULATORY FEES

Population served	Class A	Class B	Class C	Class D
<=20,000	\$500	\$400	\$250	\$300
20,001—50,000	1,000	750	400	500

¹⁰ The number of stations is not exactly divisible by 10, leaving group 10 with five less stations than the other groups.

AM RADIO STATION REGULATORY FEES—Continued

Population served	Class A	Class B	Class C	Class D
50,001—125,000	1,500	1,000	500	750
125,001—400,000	2,000	1,500	750	1,000
400,001—1,000,000	3,000	2,500	1,250	1,750
>1,000,000	4,250	3,500	2,000	2,500

FM RADIO STATION REGULATORY FEES

Population served	Classes A, B1 & C3	Classes B, C, C1 & C2
<=20,000	\$400	\$500
20,001—50,000	750	1,000
50,001—125,000	1,000	1,500
125,001—400,000	1,500	2,000
400,001—1,000,000	2,500	3,000
>1,000,000	3,500	4,250

vii. Effect of Revenue Redistributions on Major Constituencies

27. The following chart illustrates the relative percentage of the overall revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

PERCENTAGE OF REVENUE COLLECTED BY CONSTITUENCY

	Fiscal years—				
	1994 (Actual)	1995 (Actual)	1996 (Actual)	1997 (Actual)	1998 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.4	24.0	33.4	21.8	18.1
Broadcast Licensees	23.8	13.8	14.6	14.1	15.3
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	5.0	5.0
Common Carriers	25.0	44.5	40.9	49.8	47.8
Wireless Licensees	6.5	14.1	7.1	9.3	13.8
Total	100.0	100.0	100.0	100.0	100.0

C. Other Issues

i. Distinguishing between CMRS Fee Categories

28. We have received several comments from CMRS fee payers concerning the difficulty some of them have had in distinguishing between CMRS Mobile Services fees and CMRS Messaging Services fees. In our *FY 1997 Report and Order* (see paragraphs 58–62) we stated that Congress in its statutory fee schedule distinguished between licensees that we authorized to provide exclusive use services and those we authorized to provide only shared use services. Section (g) assesses a higher fee upon licensees of exclusive use spectrum than upon licensees of less valuable shared use spectrum. Similarly, the statutory fee schedule established fees for broadcast licensees that consider the type of service and class of service authorized. Moreover, since we established the fee program, our fee schedules have adhered to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum. Thus,

we propose that our fee schedule for CMRS will not consider the particular use made of a licensee's spectrum and will consider the nature of services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum will be subject to different categories of fee payment. Thus, licenses authorizing operations on broadband spectrum would be subject to the CMRS Mobile Services fee, regardless of the services offered on that spectrum by the licensee. Further, licenses authorizing the provision of services on narrowband spectrum would be subject to the CMRS Messaging Services fee, regardless of the services offered on that spectrum. See also Attachment H, paragraphs 14 and 15. We also tentatively conclude that the Wireless Communications Service should be classified as CMRS Mobile Services. We request comments on these matters. We also believe a further clarification of which entities should be paying which CMRS fee would be beneficial to licensees and other fee payers. Separately, we propose to incorporate a clarification as to what is meant by CMRS "units" and who is

responsible for paying regulatory fees for various kinds of CMRS units. See also Attachment H, paragraph 16.

29. The following categories of CMRS licensees would be covered by the CMRS Mobile Services regulatory fee:

Rural Radio Service
Air-ground Radiotelephone Service
Cellular Radiotelephone Service
Offshore Radiotelephone Service
Broadband Personal Communications Services
Wireless Communications Service
Specialized Mobile Radio Service
Public Coast Service

30. The following categories of CMRS licensees would be covered by the CMRS Messaging Services regulatory fee:

Paging and Radiotelephone Service
Narrowband Personal Communications Services
220–222 MHz Band
Interconnected Business Radio Services

31. Licensees in the Specialized Mobile Radio Service have requested reconsideration of our determination that FY 1997 CMRS regulatory fees should be based upon whether a licensee operates on broadband or

narrowband spectrum. See *FY 1997 Report and Order* at para. 60. We expect to address these concerns in our action on petitions for reconsideration of the *FY 1997 Report and Order*. Interested parties may comment in this proceeding on the appropriate fee structure for CMRS licensees and, in particular, may present alternatives to the methodology we established for FY 1997.

Commenters should be aware that we do not believe that a case-by-case determination of the appropriate fee for a particular SMR licensee would serve the public interest due to the heavy resource burden it would require.

ii. Clarification of Operational LEO System

32. In our *FY 1997 Report and Order* at paragraph 75, we reiterated our requirement that licensees of low earth orbit satellite systems (LEOS) pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We stated that we require payment of the LEO fee following commencement of operations of a system's first satellite in order to assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that regulatees in other services are not burdened with these costs any longer than necessary. However, because § 25.120(d) applies to both geostationary and non-geostationary satellite systems, we believe that we need to clarify our existing definition of an operational LEO satellite. Non-geostationary satellite licensees, including licensees of LEO systems, are required to submit reports pursuant to §§ 25.142(c), 25.143(e), and 25.145(g) of the Commission's rules. These reports, annual and filed upon completion of milestones, report the status of a [the] system and indicate compliance under § 25.120(d). In our *FY 1997 Report and Order* at paragraph 75, we reiterated our requirement that licensees of low earth orbit satellite systems (LEOS) pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We stated that we require payment of the LEO fee following commencement of operations of a system's first satellite in order to assure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that regulatees in other services are not burdened with these costs any longer than necessary. However, because § 25.120(d) applies to both geostationary and non-geostationary satellite systems, we believe that we need to clarify our

existing definition of an operational LEO satellite to prevent misunderstanding of our intent as stated in paragraph 75 of our *FY 1997 Report and Order*. As such, we propose to add the following to our guidance (see Attachment H) relative to determining whether or not a LEO satellite is operational for fee assessment purposes:

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

iii. Renaming of LEO Fee Category

33. "Non-Geostationary" satellite orbits were first introduced in the early 90's with the filing of applications for non-voice, non-geostationary satellite service operating below 1 GHz. These satellites proposed to operate satellites in a "low earth" orbit, or a non-geostationary orbit. The term, "low earth orbit" was then synonymous with "non-geostationary". As new technologies have evolved, we have received applications proposing to operate in "medium" and "high" earth orbit technologies, also non-geostationary orbits, have been filed with the FCC]. Thus, we propose to change the name of the "Low Earth Orbit Satellite Systems" fee category to the "Non-Geostationary Satellite Systems" fee category in order to clarify that non-geostationary satellites, whether operating in low, medium or high orbits, are covered under this regulatory fee. This is consistent with current industry use, as well as with Commission rules, which refer to non-geostationary, not low earth, orbits and satellites. This name change will have no adverse impact on any entity covered by regulatory fees in FY 1998.

D. Procedures for Payment of Regulatory Fees

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

are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

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

ii. Installment Payments for Large Fees

36. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

37. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we

decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.¹¹ We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

38. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 1998.

v. Standard Fee Calculations and Payment Dates

39. As noted, the time for payment of standard fees and any installment payments will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be submitted for any authorization held as of *October 1, 1997*. October 1 is the date to be used for establishing liability for payment of standard fees.

40. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits

on *December 31, 1997*, will be used to calculate the fee payment.¹²

E. Schedule of Regulatory Fees

41. The Commission's proposed Schedule of Regulatory Fees for FY 1998 is contained in Attachment F of this *NPRM*.

IV. Procedural Matters

A. Comment Period and Procedures

42. Pursuant to procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 22, 1998, and reply comments on or before May 4, 1998. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments at the same address or may e-mail their comments to mcontee@fcc.gov. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

43. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. See 47 CFR 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act, see 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities

¹² Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1997, rather than on a count as of December 31, 1997.

of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

45. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 159, & 303(r). It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

46. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),¹³ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 42. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof)

¹³ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹¹ Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS).

will be published in the **Federal Register**. See *id.*

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

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 1998, we intend to collect regulatory fees in the amount of \$162,523,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁸ Nationwide, as of 1992, there were approximately

275,801 small organizations.¹⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²⁰ As of 1992, there were approximately 85,006 such jurisdictions in the United States.²¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.²² The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.²³ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.²⁴

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.²⁵ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end

of 1995.²⁶ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁷ The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²⁸ Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450.²⁹ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,³⁰ and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),³¹ multipoint distribution systems (MDS),³² satellite

¹⁹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

²⁰ 5 U.S.C. § 601(5).

²¹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

²² *Id.*

²³ 13 CFR, § 121.201, SIC code 4841.

²⁴ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

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

²⁶ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

²⁷ 47 U.S.C. § 543(m)(2).

²⁸ *Id.* § 76.1403(b).

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

³⁰ We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR § 76.1403(d).

³¹ Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

³² Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

¹⁴ 5 U.S.C. § 603(b)(3).

¹⁵ *Id.* § 601(6).

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

¹⁷ Small Business Act, 15 U.S.C. § 632 (1996).

¹⁸ 5 U.S.C. § 601(4).

master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).³³ According to data in the most recent report, there are 3,459 interstate carriers.³⁴ These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.³⁵ Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this

analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."³⁶

12. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁷ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."³⁸ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁹ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁴⁰ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295

non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴¹ According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.⁴² We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴³ According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.⁴⁴ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at

³³ FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*).

³⁴ *Id.*

³⁵ 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

³⁶ See 13 CFR § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

³⁷ U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (1992 Census).

³⁸ See generally 15 U.S.C. § 632(a)(1).

³⁹ 1992 Census, *supra*, at Firm Size 1-123.

⁴⁰ 13 CFR § 121.201, SIC code 4813.

⁴¹ *Id.*

⁴² *Telecommunications Industry Revenue*, Figure 2.

⁴³ 13 CFR § 121.201, SIC code 4813.

⁴⁴ *Telecommunications Industry Revenue*, Figure 2.

this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXC's that may be affected by the proposed rules, if adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.⁴⁵ According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.⁴⁶ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴⁷ According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.⁴⁸ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the proposed rules, if adopted.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁴⁹ According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.⁵⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.⁵¹ According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.^{51a} We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

20. 800 Service Subscribers.^{51b} Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 service ("toll free") subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the 800

numbers in use.^{51c} According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use.^{51d} According to our most recent data, at the end of August 1996, the number of 888 numbers that had been assigned was 2,014,059. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the proposed rules, if adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).^{51e} This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.^{51f} According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9,999 million.^{51g} The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six

^{51c} FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

^{51d} FCC, CCB Industry Analysis Division, *Long Distance Carrier Code Assignments*, p. 80, Tbl. 10B (Oct. 18, 1996).

^{51e} An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

^{51f} 13 CFR § 120.121, SIC code 4899.

^{51g} 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁴⁵ 13 CFR § 121.201, SIC code 4813.

⁴⁶ *Telecommunications Industry Revenue*, Figure 2.

⁴⁷ 13 CFR § 121.201, SIC code 4813.

⁴⁸ *Telecommunications Industry Revenue*, Figure 2.

⁴⁹ 13 CFR § 121.201, SIC code 4813.

⁵⁰ *Telecommunications Industry Revenue*, Figure 2.

⁵¹ 13 CFR § 121.201, SIC code 4813.

^{51a} *Telecommunications Industry Revenue*, Figure 2.

^{51b} We include all toll-free number subscribers in this category, including 888 numbers.

international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations).

There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 3000 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 3000 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

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

29. Space Stations (Geostationary). Commission records reveal that there are 46 space station licensees. We do not request nor collect annual revenue information, and thus are unable to

estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."^{51h} This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁵¹ⁱ As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.^{51j} The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.^{51k} Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable

^{51h} 13 CFR § 120.121, SIC code 4841.

⁵¹ⁱ 13 CFR § 121.201, SIC code 4841.

^{51j} While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See *Report and Order in MM Docket No. 93-48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. § 601(3).

^{51k} 13 CFR § 121.201, SIC code 4833.

and other pay television services.^{51l} Included in this industry are commercial, religious, educational, and other television stations.⁵² Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁵³ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁵⁴ There were 1,509 television stations operating in the nation in 1992.⁵⁵ That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.⁵⁶ For 1992,⁵⁷ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁵⁸ Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.⁵⁹ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁶⁰ Included in this industry are commercial, religious, educational,

^{51l} Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995) (1992 Census, Series UC92-S-1)*.

⁵² *Id.*; see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

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

⁵³ *1992 Census, Series UC92-S-1*, at Appendix A-9.

⁵⁴ *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁵⁵ FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92-S-1*, at Appendix A-9.

⁵⁶ FCC News Release, "Broadcast Station Totals as of December 31, 1997."

⁵⁷ A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92-S-1*, at III.

⁵⁸ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁵⁹ 13 CFR § 121.201, SIC code 4832.

⁶⁰ *1992 Census, Series UC92-S-1*, at Appendix A-9.

and other radio stations.⁶¹ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.⁶² However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.⁶³ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.⁶⁴ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁶⁵ As of December 31, 1997, Commission records indicate that 12,27 radio stations were operating, of which 7,465 were FM stations.⁶⁶ Only commercial stations are subject to regulatory fees.

34. Thus, the proposed rules, if adopted, will affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.⁶⁷ Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.⁶⁸ These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).⁶⁹ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for

broadcasting.⁷⁰ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.⁷¹ We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.⁷²

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.⁷³

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.⁷⁴ The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast

facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.⁷⁵

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.⁷⁶ In connection with the 1996 MDS auction the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.⁷⁷ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁷⁸ These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j). Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.⁷⁹ MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,878 MDS licensees are subject to regulatory

⁷⁰ The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. See *Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

⁷¹ See, e.g., 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

⁷² Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

⁷³ 13 C.F.R. § 121.201, SIC code 4832.

⁷⁴ FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831 (Jan. 21, 1997).

⁷⁵ 15 U.S.C. § 632.

⁷⁶ For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

⁷⁷ See 47 C.F.R. § 1.2110 (a)(1).

⁷⁸ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

⁷⁹ *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 *Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36-39.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁶⁵ FCC News Release, No. 31327 (Jan. 13, 1993).

⁶⁶ FCC News Release, "Broadcast Station Totals as of December 31, 1997."

⁶⁷ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

⁶⁸ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

⁶⁹ FCC News Release, No. 7033 (Mar. 6, 1997).

fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁸⁰ According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁸¹ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.⁸² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

40. 220 MHz Radio Services. Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁸³ With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the

preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

41. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁸⁴ At present, there are approximately 24,000 Private Carrier Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.⁸⁵ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

42. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,⁸⁶ and the most

recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.⁸⁷ Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

43. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁸⁸ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁸⁹ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁹⁰ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁹¹ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

44. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS.

⁸⁷ *Telecommunications Industry Revenue*, Figure 2.

⁸⁸ See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

⁸⁹ See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

⁹⁰ See, *e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

⁹¹ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

⁸⁰ 13 C.F.R. § 121.201, SIC code 4812.

⁸¹ 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

⁸² *Telecommunications Industry Revenue*, Figure 2.

⁸³ 13 C.F.R. § 121.201, SIC code 4812.

⁸⁴ 13 C.F.R. § 121.201, SIC code 4812.

⁸⁵ *Telecommunications Industry Revenue*, Figure 2.

⁸⁶ 13 C.F.R. § 121.201, SIC code 4812.

The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁹² A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁹³ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁹⁴ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

46. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁹⁵ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁹⁶ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

47. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁹⁷ In the context of 900

MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

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

49. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

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

51. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs⁹⁸ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

52. Amateur Radio Service. We estimate that 10,000 applicants will

apply for vanity call signs in FY 1998. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.⁹⁹

54. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,500 will be subject to FY 1998 regulatory fees.

55. Fixed Microwave Services. Microwave services include common carrier,¹⁰⁰ private-operational fixed,¹⁰¹ and broadcast auxiliary radio services.¹⁰² At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone

⁹⁹ 13 C.F.R. § 121.201, SIC code 4812.

¹⁰⁰ 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's Rules).

¹⁰¹ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹⁰² Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹² The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁹³ BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

⁹⁴ 13 C.F.R. § 121.201, SIC code 4812.

⁹⁵ The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁹⁶ 13 C.F.R. § 121.201, SIC code 4812.

⁹⁷ See 47 C.F.R. § 90.814(b)(1).

⁹⁸ Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

companies—i.e., an entity with no more than 1,500 persons.¹⁰³ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

56. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹⁰⁴ There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.¹⁰⁵ All licensees in this category are exempt from the payment of regulatory fees.

57. **Personal Radio Services.** Personal radio services provide short-range, low power radio for personal communications, radio signalling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).¹⁰⁶ Inasmuch

as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

58. **Offshore Radiotelephone Service.** This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.¹⁰⁷ At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

59. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

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

60. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.¹⁰⁸ Interstate

Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of Part 95 of the Commission's Rules. 47 C.F.R. §§ 95.401–95.428; §§ 95.1–95.181; §§ 95.201–95.225; 47 C.F.R. §§ 95.191–95.194.

¹⁰⁷ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001–22.1037.

¹⁰⁸ The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt

telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the Telecommunications Relay Service (TRS) Fund, and they must complete and submit the FCC Form 159.

Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

61. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

62. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25% in addition to the required fee.¹⁰⁹ Until payment is received, no new or pending

under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

¹⁰⁹ 47 U.S.C. 1.1164(a).

¹⁰³ 13 C.F.R. § 121.201, SIC 4812.

¹⁰⁴ With the exception of the special emergency service, these services are governed by Subpart B of Part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15–90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15–90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33–90.55.

¹⁰⁵ 5 U.S.C. § 601(5).

¹⁰⁶ Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS),

applications will be processed, and existing authorizations may be subject to rescission.¹¹⁰ Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.¹¹¹ Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.¹¹²

63. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.¹¹³ However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will

accept a petition to defer payment along with a waiver or reduction request.

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

64. *The Omnibus Consolidated Appropriation Act*, Public Law 105-119, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 1998. See 47 U.S.C. § 159(a). We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

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

66. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See, e.g., footnote 108, *supra*, and Attachment H of the *NPRM*, *infra*.

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

67. None.

Attachment B—Sources of Payment Unit Estimates for FY 1998

In order to calculate individual service fees for FY 1998, we adjusted FY 1997 payment units for each service to more accurately reflect expected FY 1998 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1998 estimates with actual FY 1997 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1998 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1998 payment units are based on FY 1997 actual payment units, it does not necessarily mean that our FY 1998 projection is *exactly* the same number as FY 1997. It means that we have either rounded the FY 1998 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS ¹¹⁴ , Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on actual FY 1997 payment units adjusted to take into consideration industry estimates of growth between FY 1997 and FY 1998 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1997 payment units.
UHF/VHF Television Stations	Based on actual FY 1997 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1997 payment units.
LPTV, Translators and Boosters	Based on actual FY 1997 payment units.
Auxiliaries	Based on actual FY 1997 payment units.
MDS/MMDS	Based on actual FY 1997 payment units.
Cable Antenna Relay Service (CARS).	Based on actual FY 1997 payment units.
Cable Television System Subscribers.	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers.	Based on actual FY 1997 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1998 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1997 payment units.
Space Stations (GEOs & NGEOS)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.

¹¹⁰ 47 U.S.C. 1.1164(c).

¹¹¹ Public Law 104-134, 110 Stat. 1321 (1996).

¹¹² 31 U.S.C. 7701(c)(2)(B).

¹¹³ 47 U.S.C. § 1.1166.

ATTACHMENT D.—CALCULATION OF REGULATORY COSTS

Fee category	Actual FY 1997 regulatory costs	Overhead and other indirect pro rated	Total costs with overhead and other indirect pro rated	Total costs pro-rated to \$162 million**	Adjusted pro- rated costs***
LM (220 MHz, >470 MHz-Base, SMRS)	1,952,428	98,195	2,050,623	2,113,136	2,113,136
Microwave	4,860,809	244,469	5,105,277	5,260,912	5,260,912
IVDS	2,122,499	106,749	2,229,248	2,297,206	2,297,206
Marine (Ship)	2,754,238	138,521	2,892,759	2,980,945	2,980,945
GMRS/Other LM	5,943,682	298,930	6,242,612	6,432,918	6,432,918
Aviation (Aircraft)	980,895	49,333	1,030,228	1,061,635	1,061,635
Marine (Coast)	685,608	34,482	720,090	742,041	742,041
Aviation (Ground)	562,239	28,277	590,516	608,518	608,518
Amateur Vanity Call Signs	88,615	4,457	93,072	95,909	95,909
AM/FM Radio	14,125,529	710,427	14,835,955	15,288,230	14,396,926
AM Construction Permits					103,960
FM Construction Permits					787,344
Satellite TV					70,397
Satellite TV Construction Permit					11,690
VHF Television	4,957,533	249,333	5,206,866	5,365,598	
VHF Markets 1–10					1,291,499
VHF Markets 11–25					1,129,458
VHF Markets 26–50					1,371,983
VHF Markets 51–100					1,000,147
VHF Remaining Markets					502,757
VHF Construction Permits					30,584
UHF Television	2,954,865	148,611	3,103,476	3,198,086	
UHF Markets 1–10					1,023,388
UHF Markets 11–25					756,347
UHF Markets 26–50					531,842
UHF Markets 51–100					484,190
UHF Remaining Markets					202,119
UHF Construction Permits					166,940
Auxiliaries	146,460	7,366	153,826	158,515	158,515
International HF Broadcast	217,931	10,961	228,891	235,869	235,869
LPTV/Translators/Boosters	736,547	37,044	773,590	797,173	797,173
CARS	61,797	3,108	64,905	66,883	66,883
Cable Systems	20,125,023	1,012,164	21,137,187	21,781,555	21,781,555
Interstate Telephone Service Providers	53,234,026	2,677,341	55,911,367	57,615,828	57,615,828
CMRS Mobile Services (Cellular/Public Mobile)	11,273,798	567,002	11,840,801	12,201,768	12,201,768
CMRS—One Way Paging	6,015,701	302,552	6,318,254	6,510,866	6,510,866
MDS/MMDS	1,357,260	68,262	1,425,521	1,468,979	1,468,979
International Circuits	8,253,772	415,114	8,668,886	8,933,157	8,933,157
International Public Fixed	193,436	9,729	203,165	209,358	209,358
Earth Stations	339,999	17,100	357,099	367,985	367,985
Space Stations (Geostationary Orbit)	5,677,889	285,563	5,963,452	6,145,248	6,145,248
Space Stations (Non-Geostationary Orbit)	540,215	27,169	567,385	584,681	584,681
Overhead & Other Indirect Costs	7,552,257				
****Total	157,715,049	7,552,257	157,715,049	162,523,000	162,532,656
****Total Revenue Requirement	162,523,000		162,523,000	162,523,000	162,523,000
Difference	(4,807,951)		(4,807,951)		9,656

**1.046987 factor applied

***The pro rated costs shown in the previous column needed to be adjusted to sub-allocate TV and radio costs.

Note: Columns may not add due to rounding.

ATTACHMENT E.—CALCULATION OF FY 1998 REGULATORY FEES

Fee category	Pro-rated revenue requirement	Adjusted activity costs	Costs vs. revenue requirement difference (percent)	Pro-revenue requirement plus 25% ceiling	Round 1 Target revenue	Round 1 Adjustable target revenue	Round 1 Pro-rated revenue	Round 2 Target revenue	Round 2 Adjustable target revenue	Round 2 Pro-rated revenue	Computed new FY 1998 regulatory fee	Rounded new FY 1998 regulatory fee	Expected FY 1998 revenue
LM (220 MHz, >470MHz-Base, SMRS)	225,691	2,113,136	836.30	282,114	282,114	.....	282,114	282,114	.....	282,114	12	12	278,700
Microwave	872,640	5,280,912	502.87	1,090,800	1,090,800	.....	1,090,800	1,090,800	.....	1,090,800	12	12	1,077,600
IVDS	0	2,297,206	.....	0	0	.....	0	0	.....	0	0	0	0
Marine (Ship)	801,702	2,980,945	271.83	1,002,128	1,002,128	.....	1,002,128	1,002,128	.....	1,002,128	6	6	990,000
GMRS/Other LM	1,760,465	6,432,918	285.41	2,200,581	2,200,581	.....	2,200,581	2,200,581	.....	2,200,581	6	6	2,173,950
Aviation (Aircraft)	170,058	1,061,635	524.28	212,573	212,573	.....	212,573	212,573	.....	212,573	6	6	210,000
Marine (Coast)	33,283	742,041	2129.49	41,604	41,604	.....	41,604	41,604	.....	41,604	6	6	41,100
Aviation (Ground)	45,308	608,518	1243.07	56,635	56,635	.....	56,635	56,635	.....	56,635	6	6	55,950
Amateur Vanity Call Signs	485,880	95,909	-80.26	607,350	607,350	95,909	128,310	128,310	128,310	128,310	1.29	1.29	128,757
AM/FM Radio	9,460,469	14,396,926	52.18	11,825,586	11,825,586	.....	11,825,586	11,825,586	.....	11,825,586	1,368	1,375	11,888,250
AW Construction Permits	11,749	103,960	784.84	14,686	14,686	.....	14,686	14,686	.....	14,686	237	235	14,570
FM Construction Permits	436,660	787,344	80.31	545,825	545,825	.....	545,825	545,825	.....	545,825	1,154	1,150	543,950
Satellite TV	96,933	70,397	-27.38	121,166	121,166	70,397	94,179	94,179	94,179	94,179	900	900	94,500
Satellite TV Construction Permit	3,353	11,690	248.64	4,191	4,191	.....	4,191	4,191	.....	4,191	419	420	4,200
VHF Markets 1-10	1,429,508	1,291,499	-9.65	1,786,885	1,786,885	1,291,499	1,727,804	1,727,804	1,727,804	1,727,804	41,282	41,275	1,733,550
VHF Markets 11-25	1,686,441	1,129,458	-33.03	2,108,051	2,108,051	1,129,458	1,511,021	1,511,021	1,511,021	1,511,021	24,857	24,850	1,515,850
VHF Markets 26-50	1,283,306	1,371,986	6.91	1,604,133	1,371,986	1,371,986	1,835,481	1,835,481	1,835,481	1,835,481	22,593	22,600	1,804,600
VHF Markets 51-100	1,129,477	1,000,147	-11.45	1,411,846	1,000,147	1,000,147	1,338,025	1,338,025	1,338,025	1,338,025	11,379	11,375	1,342,250
VHF Remaining Markets	548,146	502,757	-8.28	685,183	502,757	502,757	672,602	672,602	672,602	672,602	3,261	3,250	672,750
VHF Construction Permits	46,644	30,584	-34.43	58,305	30,584	30,584	40,916	40,916	40,916	40,916	410	410	41,000
UHF Markets 1-10	1,539,171	1,023,388	-33.51	1,923,964	1,023,388	1,023,388	1,369,117	1,369,117	1,369,117	1,369,117	14,616	14,625	1,374,750
UHF Markets 11-25	1,257,069	756,347	-39.83	1,571,336	756,347	756,347	1,011,862	1,011,862	1,011,862	1,011,862	10,577	10,575	1,015,200
UHF Markets 26-50	1,054,360	531,842	-49.56	1,317,950	531,842	531,842	711,513	711,513	711,513	711,513	5,758	5,750	713,000
UHF Remaining Markets	789,749	484,190	-38.69	987,186	484,190	484,190	647,763	647,763	647,763	647,763	3,779	3,775	649,300
UHF Construction Permits	238,761	202,119	-15.35	298,451	202,119	202,119	270,400	270,400	270,400	270,400	1,491	1,500	273,000
Auxiliaries	485,880	158,515	-67.38	607,350	158,515	158,515	212,066	212,066	212,066	212,066	3,614	3,625	181,250
International HF Broadcast	1,516	235,869	15458.64	1,895	1,895	.....	1,895	1,895	.....	1,895	474	475	1,900
LPTV/Translators/Boosters	489,573	797,173	62.83	611,966	611,966	.....	611,966	611,966	.....	611,966	267	265	606,850
CARS	113,696	66,883	-41.17	142,120	66,883	66,883	89,478	89,478	89,478	89,478	50	50	90,000
Cable Systems	34,633,530	21,781,555	-37.11	43,291,913	21,781,555	21,781,555	29,139,975	29,139,975	29,139,975	29,241,595	0.44	0.44	29,241,595
Interstate Telephone Service Providers	79,023,026	57,615,828	-27.09	98,778,783	57,615,828	57,615,828	77,080,070	77,080,070	77,080,070	77,348,871	0.00110	0.00110	77,348,871
CMRS Mobile Services (Cellular/Public Mobile)	12,953,173	12,201,768	-5.80	16,191,466	12,201,768	12,201,768	16,323,867	16,323,867	16,323,867	16,191,466	0.29	0.29	16,191,466
CMRS Messaging Services	1,154,218	6,510,866	464.09	1,442,773	1,442,773	.....	1,442,773	1,442,773	.....	1,442,773	0.04	0.04	1,442,773
MDS/MMDS	392,368	1,468,979	274.39	490,460	490,460	.....	490,460	490,460	.....	490,460	261	260	488,280
International Circuits	1,579,110	8,933,157	465.71	1,973,888	1,973,888	.....	1,973,888	1,973,888	.....	1,973,888	6	6	1,950,000
International Public Fixed	904	209,358	23059.07	1,130	1,130	.....	1,130	1,130	.....	1,130	377	375	1,125
Earth Stations	1,501,369	367,985	-75.49	1,876,711	367,985	367,985	492,301	492,301	492,301	494,017	165	165	495,000
Space Stations (Geostationary Orbit)	4,379,577	6,145,248	40.32	5,474,471	5,474,471	.....	5,474,471	5,474,471	.....	5,474,471	119,010	119,000	5,474,000
Space Stations (Non-Geostationary Orbit)	263,687	584,681	121.73	329,609	329,609	.....	329,609	329,609	.....	329,609	164,804	164,800	329,600
***** Total Estimated Revenue Collected	162,522,999	162,523,000	.....	203,153,749	128,453,011	100,850,097	162,523,000	162,523,000	116,537,401	162,523,000	.....	.....	162,499,486
***** Total Revenue Requirement	162,523,000	162,523,000	.....	162,523,000	162,523,000	.....	162,523,000	162,523,000	.....	162,523,000	.....	.....	162,523,000
Difference	(1)	9,659	.....	40,630,749	(34,069,989)	.....	0	(406,400)	.....	0	.....	.....	(23,514)

***1,33782803 factor applied

***1,003487295 factor applied

ATTACHMENT F.—PROPOSED FY 1998 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	12
Microwave (per license) (47 CFR Part 101)	12
Interactive Video Data Service (per license) (47 CFR Part 95)	(1)
Marine (Ship) (per station) (47 CFR Part 80)	6
Marine (Coast) (per license) (47 CFR Part 80)	6
General Mobile Radio Service (per license) (47 CFR Part 95)	6
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	6
Aviation (Ground) (per license) (47 CFR Part 87)	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	1.29
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 27, 80 and 90) .....	.29
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22 and 90) .....	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	260
AM & FM Radio (47 CFR Part 73):	
Group 1	2,500
Group 2	2,250
Group 3	2,000
Group 4	1,750
Group 5	1,500
Group 6	1,250
Group 7	1,000
Group 8	750
Group 9	500
Group 10	250
AM Construction Permits	235
FM Construction Permits	1,150
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	41,275
Markets 11–25	24,850
Markets 26–50	22,600
Markets 51–100	11,375
Remaining Markets	3,250
Construction Permits	4,100
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	14,625
Markets 11–25	10,575
Markets 26–50	5,750
Markets 51–100	3,775
Remaining Markets	1,500
Construction Permits	3,625
Satellite Television Stations (All Markets)	900
Construction Permits—Satellite Television Stations	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	265
Broadcast Auxiliary (47 CFR Part 74)	11
Cable Antenna Relay Service (47 CFR Part 78)	50
Cable Television Systems (per subscriber) .....	.44
Interstate Telephone Service Providers (per revenue dollar) .....	.0011
Earth Stations (47 CFR Part 25)	165
Space Stations (per operational station in geostationary orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	164,800
International Circuits (per active 64KB circuit)	6
International Public Fixed (per call sign) (47 CFR Part 23)	375
International (HF) Broadcast (47 CFR Part 73)	475

¹ No fee.

ATTACHMENT G.—COMPARISON BETWEEN FY 1997 AND PROPOSED FY 1998 REGULATORY FEES

Fee category	Annual regulatory fee FY 1997	Proposed regulatory fee FY 1998
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	10	12
Microwave (per license) (47 CFR Part 101)	10	12
Marine (Ship) (per station) (47 CFR Part 80)	5	6
Marine (Coast) (per license) (47 CFR Part 80)	5	6
General Mobile Radio Service (per license) (47 CFR Part 95)	5	6

ATTACHMENT G.—COMPARISON BETWEEN FY 1997 AND PROPOSED FY 1998 REGULATORY FEES—Continued

Fee category	Annual regulatory fee FY 1997	Proposed regulatory fee FY 1998
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	5	6
Aviation (Ground) (per license) (47 CFR Part 87)	5	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	5	1.29
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 27, 80 and 90) .....	.24	.29
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR Parts 20, 22, and 90) .....	.03	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	215	260
Radio (47 CFR Part 73):		
Group 1	2,000	2,500
Group 2	1,800	2,250
Group 3	1,600	2,000
Group 4	1,400	1,750
Group 5	1,200	1,500
Group 6	1,000	1,250
Group 7	800	1,000
Group 8	600	750
Group 9	400	500
Group 10	200	250
AM Construction Permits	195	235
FM Construction Permits	950	1,150
TV (47 CFR Part 73) VHF Commercial:		
Markets 1–10	35,025	41,275
Markets 11–25	28,450	24,850
Markets 26–50	18,600	22,600
Markets 51–100	9,850	11,375
Remaining Markets	2,725	3,250
Construction Permits	4,800	4,100
TV (47 CFR Part 73) UHF Commercial:		
Markets 1–10	16,850	14,625
Markets 11–25	13,575	10,575
Markets 26–50	8,750	5,750
Markets 51–100	4,725	3,775
Remaining Markets	1,350	1,500
Construction Permits	2,975	3,625
Satellite Television Stations (All Markets)	950	900
Construction Permits—Satellite Television Stations	345	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	220	265
Broadcast Auxiliary (47 CFR Part 74)	25	11
Cable Antenna Relay Service (47 CFR Part 78)	65	50
Earth Stations (47 CFR Part 25)	515	165
Cable Television Systems (per subscriber) (47 CFR Part 76) .....	.54	.44
Interstate Telephone Service Providers (per revenue dollar) .....	.00116	.0011
Space Stations (per operational station in geostationary orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	97,975	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	135,675	164,800
International Bearer Circuits (per active 64KB circuit)	5	6
International Public Fixed (per call sign) (47 CFR Part 23)	310	375
International (HF) Broadcast (47 CFR Part 73)	390	475

Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *NPRM*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, and 1997 and the services subject to the fee schedule. The

categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. See 47 U.S.C. 159(b)(2), (3).

2. *Exemptions.* Governments and nonprofit entities are exempt from

paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees. See 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services)*: Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).¹¹⁵ For FY 1998, PMRS licensees will pay a \$12 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.¹¹⁶ The total regulatory fee due is either \$60 for a license with a five year term or \$120 for a license with a 10 year term.

5. *Microwave Services*: These services include private and commercial

microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1998, Microwave licensees will pay a \$12 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$120 for the ten year license term.

6. *Interactive Video Data Service (IVDS)*: The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1998. Therefore, for FY 1998, there is no regulatory fee for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service*: This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1998, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a \$6 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$60 for the ten year license term.

8. *Marine (Coast) Service*: This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1998, licensees of Marine (Coast) Stations will pay a \$6 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$30 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services*: These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1998, licensees of services in this category will pay a \$6 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$30 for the five-year license term.

10. *Aviation (Aircraft) Service*: These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1998, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a \$6 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is \$60 per station for the ten-year license term.

11. *Aviation (Ground) Service*: This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations

¹¹⁵ This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

¹¹⁶ Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1998 is less than one-tenth of one percent and, therefore, is statistically insignificant.

which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1998, licensees of Aviation (Ground) Stations will pay a \$6 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is \$30 per call sign for the five-year license term.

12. General Mobile Radio Service (GMRS): These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 1998, GMRS licensees will pay a \$6 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$30 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. Amateur Vanity Call Signs: This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a \$5 annual regulatory fee per call sign, as prescribed in the FY 1997 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 1998 fee schedule becomes effective. The total regulatory fee due would be \$50 per license for the ten-year license term.¹¹⁷ For FY 1998, Amateur Vanity Call Sign applicants will pay a \$1.29 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is \$12.90 per call sign for the ten-year license term. We propose that there will be no refunds to applicants who submit applications before implementation of the FY 1998 fee.

d. Commercial Wireless Radio Services

14. Commercial Mobile Radio Services (CMRS) Mobile Services: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to

provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);¹¹⁸ Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, Rural Radio Service, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is \$.29 per unit.

15. Commercial Mobile Radio Services (CMRS) Messaging Services: The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g., one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager,

telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is \$.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

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

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.¹¹⁹ We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and

¹¹⁷ Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

¹¹⁸ This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

¹¹⁹ The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 1998 are as follows:

Group 1	\$2,500
Group 2	2,250
Group 3	2,000
Group 4	1,750
Group 5	1,500
Group 6	1,250
Group 7	1,000
Group 8	750
Group 9	500
Group 10	250

19. Licensees may determine the appropriate fee payment by referring to a list which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's internet world wide web site (<http://www.fcc.gov>), by calling the FCC's National Call Center (1-888-225-5322), and may be included in Public Notices mailed to each licensee.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1998, permittees will pay a fee of \$235 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1998, permittees will pay a fee of \$1,150 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 66, 1998 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1-10	\$41,275
VHF Markets 11-25	24,850
VHF Markets 26-50	22,600
VHF Markets 51-100	11,375
VHF Remaining Markets	3,250
UHF Markets 1-10	14,625
UHF Markets 11-25	10,575
UHF Markets 26-50	5,750
UHF Markets 51-100	3,775
UHF Remaining Markets	1,500

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of \$900 annually. Those stations designated as Television Satellite Stations in the 1998 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1998, VHF permittees will pay an annual regulatory fee of \$4,100. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 1998, UHF Television permittees will pay an annual regulatory fee of \$3,625. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1998 is \$420. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

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

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and,

generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, non-profitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 1998, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of \$265 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1998, licensees of Commercial Auxiliary Stations will pay an \$11 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1998, MDS and MMDS

stations will pay an annual regulatory fee of \$260 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 1998, Cable Systems will pay a regulatory fee of \$.44 per subscriber.¹²⁰ Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1997. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, e.g., apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1998, licensees will pay an annual regulatory fee of \$50 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

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

b. Interstate Telephone Service Providers

33. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive

Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1998, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.0011 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund work-sheets		
(2) Less: Access charges paid ..		
(3) Less: Other telecommunications facilities and services taken for resale		

	Total	Interstate
(4) Adjusted revenues (1) minus (2) minus (3)		
(5) Fee factor		0.0011
(6) Fee due (4)times(5)		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.¹²¹ *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1998, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of \$165 per authorization or registration *as well as a separate fee of \$165 for each associated Hub Station*.

35. *Receive-only earth stations*. For FY 1998, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the

¹²¹ Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1998.

¹²⁰ Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1998, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of \$119,000 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1998, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of \$164,800 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 Report and Order at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a

system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Compare FY 1994 Report and Order at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits.

Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1998, the regulatory fee is \$6.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

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

e. International Public Fixed

39. This fee category includes common carriers authorized under part

23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1998, International Public Fixed Radio Service licensees will pay a \$375 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1998, International HF Broadcast Stations will pay an annual regulatory fee of \$475 per station license.

Attachment I—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.¹²²

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy

¹²² Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

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

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules. See 47 U.S.C. 73.150 and 73.152. Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSLS was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-

specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials. See 47 U.S.C. 73.313. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-97-2714]

RIN 2127-AG17

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This action withdraws the proposed rulemaking which considered allowing partial ejection of the Hybrid III dummy during crash tests under FMVSS No. 208. The NPRM addressing the proposed change was published on August 30, 1996. 61 FR 45927. NHTSA is terminating this rulemaking because it believes full containment is an important safety issue. Additionally while NHTSA was aware that the problem addressed by the petition occurs only in a limited number of vehicles and under limited circumstances before it issued the NPRM, it is now also aware that the problem is now being successfully addressed by vehicle manufacturers. The agency notes that future rulemakings in the area of glazing may provide manufacturers with an opportunity to further correct any partial ejection problems.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS-11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC

20590. Telephone: (202) 366-2264. Fax: (202) 366-4329.

For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1995, the American Automobile Manufacturers Association (AAMA) submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." The petition sought to amend the standard's provisions which currently require that the test dummy must remain within the test vehicle throughout a crash test sequence. AAMA averred that the requirement is impracticable and outdated, stating that it is now widely recognized that air bags are a supplemental restraint system which cannot adequately restrain an unbelted occupant. AAMA also claimed that partial ejections of the test dummies were random and momentary. AAMA requested that S6.1.1 of FMVSS No. 208 be changed from "[A]ll portions of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test" to "[T]he test device shall be within the vehicle passenger compartment at the completion of the test."

After reviewing AAMA's petition, NHTSA issued an NPRM on August 30, 1996 (61 FR 45927). The agency stated that the question of whether to issue the amendment requested by the petitioner should be decided in the context of a rulemaking proceeding. NHTSA issued several specific requests for information so that it could accurately evaluate both the scope of the problem and whether there were options available other than eliminating the containment requirement in FMVSS No. 208. NHTSA said it would consider options ranging from making no change in the standard to adopting the amendment requested by the petitioner. The agency set forth proposed regulatory text that falls within the middle of the range of options:

All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. In the case of a test conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

NHTSA identified a number of relevant issues and requested information on the