Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 08-65
for Fiscal Year 2008	)	RM-11312
	)	

REPORT AND ORDER
AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: August 1, 2008 **Released: August 8, 2008**

Comment Date: [30 days after date of Federal Register publication]
Reply Comment Date: [60 days after date of Federal Register publication]

By the Commission: Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

ATTACHMENTS

I. INTRODUCTION

1. In this Report and Order we conclude a proceeding to collect $312,000,000 in regulatory fees for Fiscal Year ("FY") 2008, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1] In this annual regulatory fee proceeding, we retain the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a filing window in September 2008 in order to collect the required amount by the end of our fiscal year.

2. As a general matter, our annual regulatory fee rulemakings must be concluded in a short time frame to allow regulatees to make their payments for the relevant fiscal year that fund Commission operations. These yearly rulemaking proceedings are not conducive to exploring more general regulatory fee issues. We have not conducted an in-depth review of our regulatory fee methodology since 1994.[2] We, however, adopt a Further Notice of Proposed Rulemaking ("FNPRM") to explore how we can comprehensively make the Commission's regulatory fee process more equitable.

II. REPORT AND ORDER

3. On May 8, 2008, we released a Notice of Proposed Rulemaking and Order ("*FY 2008 NPRM*") seeking comment on regulatory fee issues for FY 2008.[3] The section 9 regulatory fee proceeding is an annual rulemaking process to ensure the Commission collects the fee amount required by Congress each year. In the *FY 2008 NPRM*, we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. We received nine comments and 12 reply comments.[4] We address the issues raised in our *FY 2008 NPRM* below.

A. Calculation of Revenue and Fee Requirements

4. In our FY 2008 regulatory fee assessment, we use the same section 9 regulatory fee assessment methodology adopted for FY 2007. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2008 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment B. To collect the $312,000,000 required by Congress, we adjust the FY 2007 amount upward by approximately 7.5 percent. Consistent with past practice, we then divide the FY 2008 amount by the number of payment units in each fee category to determine the unit fee.[5] As in prior years, for cases involving small fees, *e.g.*,

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[1] 47 U.S.C. § 159(a).

[2] *See Implementation of Section 9 of the Communications Act*, Report and Order, 9 FCC Rcd 5333 (1994).

[3] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Notice of Proposed Rulemaking and Order, 23 FCC Rcd 7987 (2008) ("*FY 2008 NPRM*").

[4] *See* Appendix C for the list of commenters and abbreviated names.

[5] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per (continued….)

licenses that are renewed over a multiyear term, we divide the resulting unit fee by the term of the license and then round these unit fees consistent with the requirements of section 9(b)(2) of the Act.

B. Additional Adjustments to Payment Units

5. In calculating the FY 2008 regulatory fees listed in Attachment C, we further adjusted the FY 2007 list of payment units (Attachment A) based upon licensee databases and industry and trade group projections. In some instances, Commission licensee databases were used; in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[6] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2008, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, our estimated FY 2008 payment units are based on FY 2007 actual payment units, but the number may have been rounded or adjusted slightly to account for these variables.

6. We consider additional factors in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment D. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.[7]

1. Commercial Mobile Radio ("CMRS") Messaging Service

7. CMRS Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.[8] In the *FY 2008 NPRM*, we proposed

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revenue dollar (Interstate Telecommunications Service Provider ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

[6] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report*.

[7] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

[8] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17184-85, ¶ 60 (1997) ("*FY 1997 Report and Order*").

maintaining the messaging service regulatory fee at $0.08 per subscriber; the rate first established for this service in FY 2002.[9]

8. One commenter, AAPC, addressed this issue.[10] AAPC agrees with our proposal and observes that maintaining the fee at the existing level is a reasonable and appropriate action due to the paging industry's declining subscriber base.[11] We conclude that for FY 2008 we should continue this regulatory fee rate at $0.08 per subscriber due to the declining subscriber base in this industry.[12]

2. Private Land Mobile Radio Service ("PLMRS")

9. Commenters observe that the proposed FY 2008 fees for a PLMRS applicant are $40 per year for exclusive use PLMRS and $20 per year for shared use PLMRS.[13] Regulatory fees for this service have increased significantly over the past three years;[14] however, there are 74 percent fewer licensees in 2008 than there were in 2005.[15] PCIA also "perceives" a decline in Commission staffing devoted to PLMRS, which would correlate with the reduction in licensees.[16] Enterprise observes that there are few rulemakings associated with these licensees and the Commission has not allocated additional spectrum for these users since the mid-1980s.[17] In addition, because these licenses are site-specific, licensees often require multiple authorizations, which further increases the regulatory fee assessment.[18] Further, these Part 90 licenses are generally private internal systems used to support businesses and are not commercial communications systems with a substantial revenue stream.[19] For these reasons, commenters contend that we should not substantially increase the regulatory fees for PLMRS.

10. Instead of freezing the regulatory fees, we are going to address this matter more comprehensively in the attached FNPRM in the context of our entire regulatory fee structure. At this time; however, we are adopting the proposals in the *FY 2008 NPRM* for FY 2008.

3. Regulatory Fee Obligations for AM Expanded Band Broadcasters

11. Currently, AM expanded band stations in the 1610-1700 kHz range are exempt from regulatory fees, as a matter of Commission policy. In the *FY 2008 NPRM*, we sought

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9 *FY 2008 NPRM* at ¶ 5.

10 AAPC Comments at 1-4.

11 *Id*. at 2.

12 The subscriber base in the paging industry declined 83 percent from 40.8 million to 7.1 million, from FY 1997 to FY 2007, according to FY 2007 collection data, as of Sept. 30, 2007.

13 PCIA Comments at 2; Enterprise Reply Comments at 2-3.

14 PCIA Comments at 2.

15 PCIA Comments at 3; Enterprise Reply Comments at 3.

16 PCIA Comments at 3.

17 Enterprise Reply Comments at 4.

18 Enterprise Reply Comments at 4-5.

19 Enterprise Reply Comments at 5-6.

comment on the most efficient way of assessing a regulatory fee on expanded band AM stations.[20] We sought comment on whether we should assess regulatory fees when the licensee has chosen to retain the expanded band station while no longer keeping the standard AM station as well as where the licensee continues to operate the standard AM station as well as the expanded band station.[21]

12. Two commenters addressed the AM expanded band issue. MRB is concerned with the situation where an expanded band licensee has relinquished its expanded band license but continues to operate under special temporary authority ("STA").[22] In such a situation, the licensee is operating the standard band and the expanded band stations, but only holds a license to the standard band station. The five-year transition period for allowing lower band AM licensees to continue to operate the AM expanded band and the lower band has not yet expired for all licensees.[23]

13. There is no compelling reason to permanently exempt AM expanded band licensees from paying regulatory fees. As a general matter, it would be appropriate to treat the AM expanded band and the AM standard band similarly for regulatory fee purposes. We note, however, that currently only 20 licensees out of 54 have surrendered one of their dual licenses. The remaining 34 licensees have either conditionally surrendered one license and are operating under an STA permitting dual operation or have retained both licenses and are continuing dual operation under STAs. The Commission has before it the pending issue of whether we should permit licensees to continue to hold both standard band and expanded band licenses.[24] This issue should be resolved before we can assess regulatory fees on the expanded band AM licensees; therefore, we are not assessing regulatory fees on expanded band AM licenses at this time.

4. International Bearer Circuits

a. Background

14. In our *FY 2006 NPRM*,[25] we observed that VSNL Telecommunications (US) Inc. ("VSNL") had filed a Petition for Rulemaking urging the Commission to revise its regulatory fee methodology for international bearer circuits ("IBCs").[26] In the Petition, VSNL proposes that the

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[20] *FY 2008 NPRM* at ¶ 7.

[21] *Id.*

[22] MRB has petitioned the Commission to waive the requirement that either the expanded band or the standard band license be returned.

[23] Chisholm Reply Comments at 1.

[24] *See* Petition for Stay of Effective Dates, filed Mar. 27, 2006; Request for Waiver of Rules Requiring Return of AM Licenses," filed Mar. 27, 2006.

[25] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Notice of Proposed Rulemaking, 21 FCC Rcd 3708, 3718, n.20 (2006) ("*FY 2006 NPRM*").

[26] *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM-11312 (filed Feb. 6, 2006) ("VSNL Petition"). VSNL Telecommunications is now Tata Communications. We released a Public Notice designating the proceeding as RM-11312 and seeking comment on the Petition. *See* Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice,* Report No. 2759 (rel. Feb. 15, 2006). In our *FY 2006 Report and Order* we stated that the issues presented in the Petition warranted consideration separately from the Commission's (continued….)

Commission: (1) reclassify non-common carrier submarine cable service as a new fee category[27] (all other carriers subject to IBC fees would be in the second category);[28] (2) apportion the IBC fee revenue requirement between the two categories, based on a comparative assessment of the regulatory services used by the entities in each category;[29] and (3) assess a flat annual fee per cable system for non-common carrier submarine cable operators.[30]

15. In our *FY 2008 NPRM*, we granted VSNL's petition and sought comment on the methodology used to calculate regulatory fees for providers of international bearer circuits.[31] We specifically sought comment on whether the Commission should retain the current methodology used to assess these regulatory fees, or modify the methodology.[32] In addition to the comments

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annual regulatory fee proceeding. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8098-99, ¶ 18 (2006) ("*FY 2006 Report and Order*").

[27] Petition at 5. *See also* Apollo RM-11312 Comments at 2-4. AT&T filed comments disagreeing with this proposal and observing that the proposed new fee category would likely exclude all or most facilities-based carrier circuits on non-common carrier cables as well as the international bearer circuits on common carrier cables. AT&T RM-11312 Comments at 6. SIA agrees that regulatory fee reform is needed, but contends that such reform should extend to the treatment on non-common carrier satellite operators as well. SIA RM-11312 Comments at 1-4.

[28] Petition at 5.

[29] *Id*. at 5-6. *See also* Level 3 RM-11312 Comments at 6-7.

[30] Petition at 6. *See also* Hibernia Atlantic RM-11312 Comments at 7-8; Level 3 RM-11312 Comments at 8-10 (supporting a flat per-system fee on all submarine cable systems); Level 3 RM-11312 Reply Comments at 8-9.

[31] The Commission's website provides the following information regarding International and Satellite License Fees, for FY 2007:

International Bearer Circuits

> **Who Must Pay**: Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits as of December 31, 2006 in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer 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. If you are required to pay regulatory fees, you should pay based on your active 64 KB circuit count as of December 31, 2006.
>
> For more information regarding compliance with regulatory fee payment requirements for international bearer circuits, refer to *FCC Public Notice: Compliance with Regulatory Fee Requirements by Cable Landing Licensees Operating on a Non-Common Carrier Basis (DA 04-2027, released July 6, 2004)*.
>
> **Fee Calculation**: $1.05 per active 64 KB circuit or equivalent.

See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-275938A6. pdf.

[32] *FY2008 NPRM* at ¶ 8. Comments filed earlier in response to the VSNL Petition are referred to as "RM-11312 Comments." Many of the same commenters filed comments on this issue in response to our *FY 2008 NPRM*. On May 30, 2008, a joint proposal for reforming International Bearer Circuit fees was submitted by Level 3 Communications, LLC, Brasil Telecom of America, Inc., Columbus Networks USA, Inc., ARCOS-1 USA, Inc.,
(continued….)

filed to the *FY 2008 NPRM*, a Revised Joint Proposal for amending our IBC regulatory fee methodology was filed as an ex parte by a group of carriers on July 11, 2008.[33]

16. This proposal modified the earlier joint proposal to address several concerns raised by the parties. The Revised Joint Proposal would do the following: (1) Create a new regulatory fee category for submarine cable systems, a new SCS fee, for both common carrier and non-common carrier systems.[34] The new SCS fee would be a flat fee, per cable landing license, with a reduced fee amount for "small-capacity systems." In addition, a consortium would be considered one cable landing license for SCS fee purposes, regardless of how many licensees were members of the consortium. (2) The SCS fee would be based originally on one-half of the current IBC category. According the Revised Joint Proposal, this would subsequently be revised downward based on the Commission's internal calculations of regulatory effort expended to regulate this industry.[35] (3) In addition, there would be a new IBC fee based on active circuits, originally based on the remaining one-half of the current fee category, for common carriers. Thus, under the Revised Joint Proposal, common carriers would pay the flat SCS per license fee and a per circuit fee and non-common carriers would pay only the flat SCS per license fee.

17. Our current rules provide that regulatory fees for international bearer circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates.[36] Non-common carrier submarine cable operators are also to pay fees for any and all international bearer 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.[37] Regulatory fees are based on the number of active 64 kbps international bearer circuits as of December 31 of the previous year.

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A.SUR Net, Inc., Hibernia Atlantic US LLC, Pacific Crossing Limited, and PC Landing Corp. *See* Joint Proposal, MD Docket No. 08-65, Attach. (filed May 30, 2008).

[33] *See* Letter from Kent D. Bressie, Counsel, Level 3 Communications, LLC to Marlene H. Dortch, Secretary, FCC, MD Docket No. 08-65, Attach. (filed July 11, 2008). This revised joint proposal was submitted by Brasil Telecom of America, Inc., Columbus Networks USA, Inc., ARCOS-1 USA Inc., A.SUR Net, Inc., Global Crossing Ltd., Level 3 Communications, LLC, Hibernia-Atlantic US LLC, Marine Cable Corp., Pacific Crossing Limited and PC Landing Corp., Reliance Globalcom Limited (fka FLAG Telecom Group Limited), and Tata Communications (US) Inc. (formerly VSNL International (US) Inc.) ("Revised Joint Proposal").

[34] Revised Joint Proposal at 1.

[35] *Id.*

[36] *See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, 21 FCC Rcd 8092, 8107, n. 62 (2006) ("*FY 2006 Report and Order*"); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, *Report and Order*, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2005* at 3 (rel. July 2005) (the fact sheet is available on the FCC web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf).

[37] *FY 2006 Report and Order*, 21 FCC Rcd at 8107, n. 62.

18. We agree with the commenters who argue that our methodology for calculating IBC regulatory fees needs to be reformed and we intend to adopt a revised methodology to be effective for FY 2009. We recognize that an in-depth review of our IBC regulatory fee methodology may be long overdue. We also note that there appears to be significant non-compliance with our current regulatory fee requirements. One issue raised by several commenters is that the regulatory fee for IBCs is far too high. We will need to address the issue of non-compliance to determine if the fee is still considered unreasonably high after non-payors are contributing as well.[38] As we mentioned earlier, if some do not pay their share of regulatory fees, the amount of fees due is increased for the remaining parties. We consider rule non-compliance a serious issue affecting all regulatees.

b. Discussion

19. Several commenters argue that non-common carrier submarine cable operators generate only a fraction of the regulatory costs common carriers generate, yet they pay the same per unit regulatory fees.[39] AT&T and Verizon disagree, and argue that due to recent deregulation such as elimination of tariff filing requirements, the reduced disparities between the Commission's treatment of these services support the continued application of the same regulatory fees to all international bearer circuits.[40] AT&T observes that the private carriers' argument ignores the regulatory costs incurred in connection with the Commission's international representational activities, work with foreign regulators, and other activities in support of the Commission's international regulatory goals to promote effective competition in the global marketplace.[41] AT&T contends that the same fees should be applied to all types of submarine cable systems.[42] The difference in size between common carrier systems and private carrier systems, contends AT&T, is even larger now than when VSNL filed its petition.[43] AT&T, Verizon, and Qwest oppose any new fee structure that would impose higher fees on facilities-based common carriers, such as the proposal that non-common carriers would no longer pay fees on active circuits.[44]

[38] We note that the flat fee proposed by commenters may address the non-compliance issue as well.

[39] *See, e.g.*, Petition at 10; Flag RM-11312 Comments at 3; SIA RM-11312 Comments at 4; Level 3 RM-11312 Reply Comments at 6-7; Level 3 Comments at 11-14.

[40] AT&T RM-11312 Comments at 8; Verizon RM-11312 Reply Comments at 2-3; Verizon Reply Comments at 4.

[41] AT&T RM-11312 Comments at 9; Verizon RM-11312 Reply Comments at 3; AT&T Reply Comments at 17; Verizon Reply Comments at 5.

[42] AT&T RM-11312 Reply Comments at 7.

[43] AT&T Comments at 3. AT&T observes that that the average capacity of the 27 U.S.-licensed non-common carrier systems is approximately 3.2 million circuits, almost ten times larger than the average capacity of U.S. common carrier systems. *Id*. at note 4.

[44] AT&T Reply Comments at 1-6; Verizon Reply Comments at 2; Qwest Reply Comments at 2.

20. VSNL argues in its Petition that the number of active 64 kpbs circuits bears no relationship to the regulatory costs that operators generate.[45] For example, one commenter explains, if a licensee doubles its cable's capacity through a technology upgrade, the regulatory fee obligations will nearly double even though the regulatory costs to the Commission do not change.[46] Pacific contends that there is no correlation between cable system size and the Commission's regulatory effort.[47] Commenters observe that the 64 kbps increment measurement is an artifact of the original channelized telephone systems, but is not relevant to the current broadband environment where data passes unchannelized in packetized form.[48]

21. The flat annual fee proposed by VSNL as an alternative to our current circuit-based fee would be derived by dividing the revenue requirement for non-common carrier submarine cable systems by the number of licensed systems.[49] The Joint Proposal suggested by Level 3 and others and the Revised Joint Proposal *ex parte* would assess a per-system fee on common carriers and private carriers (regardless of system size) and would also impose a per-circuit fee for active circuits common carriers own or lease.[50] The net effect of either of the flat fee proposals would be to provide significant advantages to private carriers.[51] Global Crossing observes that the Joint Proposal would result in double counting where a common carrier has capacity from an affiliated private operator.[52] Common carriers disagree with the flat fee proposal on the grounds that this would require smaller systems to pay higher fees per circuit and would adversely affect common carrier systems which are generally smaller than non-common

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[45] Petition at 7-8. Level 3 contends that this fee timing issue can make owners base their capacity turn-up decisions on non-market factors, such as activating circuits only at certain times of the year. Level 3 RM-11312 Comments at 5.

[46] Flag RM-11312 Comments at 6. Reliance observes that, with respect to high-capacity leases, the per 64 kbps circuit fee distorts the market. Reliance Reply Comments at 5.

[47] Pacific Reply Comments at 5.

[48] Joint Commenters RM-11312 Reply Comments at 4-5; Global Crossing Comments at 2; Pacific Comments at 11; Tata Comments at 2-4. Commenters also observe that IBC operators sell services as a "back up" or restoration service, which does not fit the definition of "active" circuits. Level 3 Comments at 15. AT&T and Qwest, on the other hand, contend that IBC fees are based on "active" capacity, which provides a reasonable and nondiscriminatory method to allocate fees and is similar to the fee structure for other licensees. AT&T RM-11312 Comments at 11-13; Qwest Reply Comments at 3.

[49] Petition at 6. Apollo agrees with VSNL and argues that a fee per cable landing license, rather than a per 64 kpbs international bearer circuit, should be adopted. Apollo RM-11312 Comments at 6. SIA suggests assessing a flat fee based on section 214 authorizations and cable landing licenses. SIA RM-11312 Comments at 2. Pacific agrees that a per system fee would be fair, equitable, and easily administrated. Pacific Comments at 4. Telstra suggests that if we adopt a flat fee, we should establish a two-year ramp up period for newly-licensed systems. Telstra Reply Comments at 2-3.

[50] Level 3 Comments at 18; Level 3 Reply Comments at 5; Verizon Reply Comments at 3; Global Crossing Reply Comments at 2-3; Qwest Reply Comments at 4. Reliance supports the Joint Proposal. Reliance Reply Comments at 7.

[51] AT&T Reply Comments at 5. Qwest observes that the Joint Proposal contains different fee structures for submarine cable operators based on their common carrier or non-common carrier status and is not competitively neutral. Qwest Reply Comments at 5.

[52] Global Crossing Reply Comments at 2.

carrier systems.[53] The Joint Commenters contend that a flat per-system fee would discourage investment in the deployment of new submarine cable systems in the Caribbean or South America.[54] Instead, the Joint Commenters argue, the Commission should adopt a two-tiered approach.[55]

22. Pacific contends that the rate proposed in our *FY 2008 NPRM* of $1.09 is too high because the number of active circuits used in the calculation was far too low.[56] According to Pacific, international common carriers alone maintained 7.55 million active 64 kpbs circuits, so our estimate of 7.5 million for common carrier and non-common carrier combined must be revised upward.[57] Pacific concludes that if the Commission used more realistic estimates of active circuits, the per unit fee would be $.20 per circuit instead of $1.09 per circuit.[58] Several commenters observe that the prices for higher-capacity circuits have dropped more steeply than the prices for low-capacity circuits, thus the regulatory fee is an increasing percentage of the price of higher-capacity circuits.[59] The current IBC regulatory fee methodology discourages new investment to increase the capacity of existing undersea cables.[60] Verizon observes that under our current regulatory fee methodology, the IBC fee has dropped from $7.00 per circuit in 2000 to $1.09 per circuit in 2008, showing that increased demand has resulted in lower per circuit fees.[61] AT&T notes that private carriers have continued to rapidly expand their U.S. underseas cable capacity.[62]

23. Commenters also observe that the Commission has no way to monitor active IBCs and therefore cannot enforce compliance with regulatory fee requirements.[63] More stringent reporting requirements, generally opposed by private carriers, could eliminate the fee avoidance problem and further reduce the per circuit fee.[64] Pacific contends that the total number of active

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[53] AT&T RM-11312 Comments at 10-11; Qwest RM-11312 Reply Comments at 4; AT&T Comments at 3; AT&T Reply Comments at 1-6; Verizon Reply Comments at 1-3. The Joint Commenters, who operate smaller systems, contend that they would be unfairly prejudiced by a flat per-system fee. Joint Commenters at 2.

[54] Joint Commenters at 2.

[55] *Id.* at 3.

[56] Pacific Comments at 7-8.

[57] *Id*. citing the Commission's "International Bureau Report on 2006 Section 43.82 Circuit Status Data," at 29, table 5.

[58] Pacific Comments at 8.

[59] Hibernia Atlantic RM-11312 Comments at 6-7; Apollo RM-11312 Comments at 6-7; Level 3 RM-11312 Comments at 3; Joint Commenters RM-11312 Reply Comments at 3-7; Global Crossing Comments at 3; Reliance Reply Comments at 5-6; Qwest Reply Comments at 2.

[60] Reliance Reply Comments at 6.

[61] Verizon Reply Comments at 5.

[62] AT&T Reply Comments at 10.

[63] Level 3 Comments at 16. Nonpayment by some operators raises the costs for others. Verizon Reply Comments at 5-6.

[64] AT&T Reply Comments at 7-8; Qwest Reply Comments at 3, note 9.

circuits is more than five times the number of payment units counted by the Commission.[65] Such significant undercounting of active circuits results in certain providers overpaying while others are underpaying.[66] Qwest observes that the Commission's reliance on section 43.82 reports of active circuits do not capture the circuits of private carriers.[67] The current practice of assessing fees based on a snapshot of active capacity on December 31 encourages operators to take capacity off line on December 31st to avoid having such capacity considered active.[68]

24. We agree with the commenters who argue that our methodology for calculating IBC regulatory fees needs to be reformed. We intend to resolve this issue within 60 days of adoption of this Order. Our rules should treat all providers subject to our regulatory fees in a nondiscriminatory and competitively neutral manner. If our rules permit certain entities to avoid complying with our regulatory fee requirements, the remaining carriers must pay a higher amount to compensate for those within the fee category who avoid payment. For FY 2008, however, we are using our current methodology and the rate set forth in Attachment C.[69]

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

25. Each year Congress requires the Commission to collect regulatory fees "to recover the costs of … enforcement activities, policy and rulemaking activities, user information services, and international activities."[70] The Act states that fees are to "be derived by determining the full-time equivalent number of employees performing" these activities "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities…."[71] Regulatory fees recover: direct costs, such as salary and expenses; indirect costs, such as overhead functions; and support costs, such as rent, utilities, or equipment.[72] Congress sets the amount the Commission collects each year in the annual appropriations law.[73]

26. Section 9 requires the Commission to make certain changes to the regulatory fee schedule "if the Commission determines that the schedule requires amendment to comply with the requirements" of section 9(b)(1)(A), cited above. The Commission must add, delete, or

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[65] Pacific Reply Comments at 3.

[66] Pacific Reply Comments at 4.

[67] Qwest Reply Comments at 3.

[68] Level 3 Comments at 17.

[69] $0.93 per active 64 KB circuit.

[70] 47 U.S.C. § 159(a).

[71] 47 U.S.C. § 159(b)(1)(A).

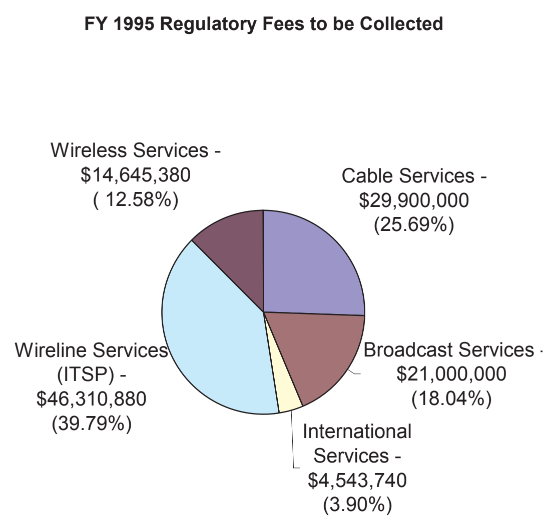
[72] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17170-71, ¶ 23 (1997) ("*FY 1997 Report and Order*"). Regulatory fees also recover costs attributable to regulatees that Congress has exempted from the fees as well as costs attributable to licensees granted fee waivers. *FY 1997 Report and Order*, 12 FCC Rcd at 17170, ¶ 22.

[73] *See, e.g.*, Consolidated Appropriations Act, 2008, P.L. 110-161.

reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law." These "permitted amendments" require Congressional notification[74] and resulting changes in fees are not subject to judicial review.[75] Neither of these provisions requires amendment of the fee schedule to mirror all changes in regulatory costs.[76]

27. To calculate regulatory fees, the Commission allocates the total collection target, as mandated by Congress each year, to each regulatory fee category. Each regulatee within a fee category must pay its proportionate share based on some objective measure, *e.g.*, revenues or subscribers. The first step, allocating fees to fee categories, is based on the Commission's 1994 calculation of full time employees ("FTEs") devoted to each regulatory fee category. We recognize that the communications industry has changed considerably since we adopted our regulatory fee schedule in 1994.[77] Services such as wireless, broadband, and voice over Internet protocol ("VoIP") have exploded in growth in recent years. The Commission itself has reorganized several times since 1994 to reflect industry changes.

28. As the following charts show, regulatory fee burdens have shifted significantly since 1995:



Source: *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 60 FR 34004 (June 29, 1995). (FY 2005 was the first year in which payment units were included in the Report and Order.)

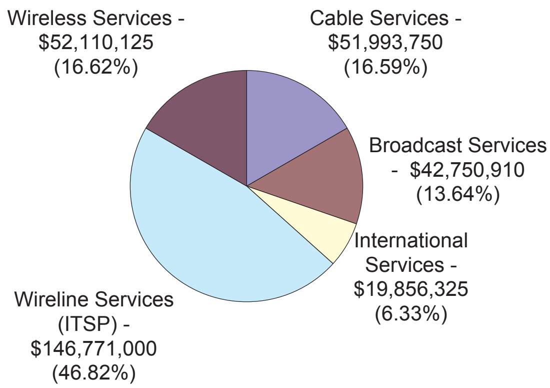
[74] 47 U.S.C. § 159(b)(4)(B).

[75] 47 U.S.C. § 159(b)(3).

[76] *FY 2004 Report and Order*, 19 FCC Rcd at 11666, ¶ 9.

[77] *See Implementation of Section 9 of the Communications Act*, Report and Order, 9 FCC Rcd 5333 (1994).

FY 2008 Regulatory Fees to be Collected



Source: Percentages and dollar amounts based on preliminary calculations while drafting the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking.

29. Historically, and in this year's proceeding, parties have challenged the Commission's regulatory fees for certain categories of services by claiming that the fees are not appropriately based on the Commission's regulatory costs.[78] Regulatory fees cannot, however, be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.[79] The initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects this approach. Two specific examples are satellite regulatory fees and radio and television regulatory fees.[80] Congress required that satellite fees be based on the number of satellites the regulatee has in operation; however, the number of satellites may or may not relate to the actual costs in terms of FTEs of regulating that particular entity.[81] Similarly, radio and television fees are based on the size of the markets served, which also may have no relationship to the Commission's costs.[82]

30. Notwithstanding that regulatory fees cannot be precisely calibrated to our actual costs of our regulatory activities, there may be several areas in which we can revise and improve

[78] *See, e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-146, Report and Order, 19 FCC Rcd 11662, 11665-67, ¶¶ 5-11 (2004) ("*FY 2004 Report and Order*").

[79] *See, e.g., FY 1997 Report and Order,* 12 FCC Rcd at 17171-72, ¶ 27.

[80] *FY 2004 Report and Order*, 19 FCC Rcd at 11666, ¶ 8.

[81] *Id.*

[82] *Id.*

our regulatory fee process to better reflect the industry today. Industry, regulatory, and Commission organizational changes may mean that the FTE estimates the Commission has used since 1994 to allocate fees to industry segments require updating. In addition, certain services may be excluded from the regulatory fee process because those services were not offered when the fee schedule was adopted and other services may be paying a disproportionate share of regulatory fees because in the past those services had a larger share of the communications market. We adopt this FNPRM to explore more equitable and reasonable approaches to assessing regulatory fees.

B. Discussion

31. The regulatory fees assessed each year are to recover a fixed amount set by Congress. Thus, increasing the regulatory fee for one category will reduce the fee for the remaining categories and vice versa. We seek comment on ways to improve our regulatory fee process regarding any and all categories of service. In light of the industry changes since 1994, how can we better determine the regulatory fees for services in a way that is aligned with the Commission's regulatory activities? We seek comment on whether we should continue to collect our regulatory fees based on the allocations noted above for FY 2008, or if we should revert to a percentage allocation closer to our FY 1995 regulatory fee allocation, or if we should adopt a different allocation based on the communications marketplace that exists today. We also seek comment on possible methodologies for re-calculating the regulatory fee allocation.

32. Commenters should discuss the fee categories that bear a too heavy regulatory fee burden. For example, some services, such as paging and PLMRS, have declining subscriber bases. Conversely, we seek comment on whether there are categories that should pay higher regulatory fees. In addition, are there categories that should be added, deleted, or reclassified? Would such changes result in a system that is more (or less) equitable and reasonable?

33. We also seek comment on whether we should review the entire regulatory fee process, apart from the annual regulatory fee orders, on a periodic basis. Should the Commission undertake a comprehensive analysis of its resource allocations as it did in 1994? Should the Commission allocate regulatory fees to each category based on the proportionate use of full time equivalent ("FTE") within the Commission? We seek comment on whether we should examine FTE allocation by industry segment or some other basis, such as strategic goal.[83]

34. Currently, the Commission uses different bases to allocate regulatory fees to entities in different regulatory fee categories. For example, fees for wireless companies are based on subscribers and wireline companies are based on revenues. Should the Commission move to harmonize these bases? Would it be more equitable to allocate fees on a single basis across all regulatory fee categories? Commenters should address the incentives or disincentives of using a particular basis for allocation. For example, do wireless companies have less incentive to sign up subscribers because each new subscriber will increase their regulatory fees?

35. As we discuss below, there are various services or entities that may not be paying their share of regulatory fees. Including more services would lessen the regulatory fee burden on

[83] *See Federal Communications Commission Fiscal Year 2007 Performance and Accountability Report* at 31-90 (http://www.fcc.gov/Reports/ar2007.pdf).

the remaining regulates. We seek comment on whether, and if so how, to include additional services. Increasing compliance with our rules also would lessen the regulatory fee burden on the remaining regulatees. We seek comment on ways to improve compliance with our rules. In addition, we seek comment on whether we should adopt additional oversight measures, such as an audit regime to ascertain that payments are in accordance with our rules.

36. We seek comment on whether we should modify our administration of regulatory fees, such as our collection processes, as well as the forms that we use for regulatory fee payors. We seek comment on whether we should modify our Form 159. Should we use a different procedure for billing and prebilling? Should our regulatory fee procedures be combined with other filing and reporting requirements? We seek comment on whether we should adopt additional performance metrics or measurements pertaining to regulatory fees. Commenters should discuss whether we should adopt additional performance measurements and publish this information regarding, for example, timeliness of payment. We also seek comment on whether there are certain categories of licensees who should qualify for reduced regulatory fees or be exempt entirely.

37. We also invite comment on several specific regulatory fee issues discussed below.

1. Interstate Telecommunications Service Providers ("ITSPs")

38. ITSPs generally identify themselves as interexchange carriers, incumbent local exchange carriers, toll resellers, or some other provider of interexchange service on the FCC Form 499-A. The FCC Form 499-A is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.[84]

39. In FY 1995, the ITSP fee rate amounted to a fee factor of .00088 per revenue dollar, representing approximately 40 percent of the revenues to be collected in FY 1995.[85] Carriers were required in FY 1995 to multiply their adjusted gross revenues (gross revenue reduced by the total amount of payments to underlying common carriers for telecommunications facilities or services) by 0.00088 to determine the appropriate regulatory fee. In the Commission's FY 1997 regulatory fee proceeding, the Commission calculated that regulation of ITSPs[86] accounted for approximately 36 percent of all Commission costs.[87] Since FY 1995, the ITSP fee factor rate has increased from .00088 per revenue dollar to .00266 in FY 2007.[88]

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[84] This is explained in our fact sheet, available at http://www.fcc.gov/fees/regfees.html.

[85] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 60 FR 34004 at 34025 (Table 4) (June 29, 1995) *("1995")* *("FY 1995 Report and Order")*.

[86] ITSPs generally identify themselves as interexchange carriers, incumbent local exchange carriers, toll resellers, or some other provider of interexchange service on the FCC Form 499-A which is filed each year on April 1 with the interstate revenues from the previous year; the ITSP regulatory fee is based on billed interstate and international end-user revenues.

[87] *See FY 1997 Report and Order*, 12 FCC Rcd at 17176, ¶ 39.

[88] *Id.*, 12 FCC Rcd at 17246.

40. ITTA, an association of mid-size local exchange carriers, filed comments to the *FY 2008 NPRM*, contending that from 1999 to 2008 the Commission's overall budget has increased by 81 percent yet the percentage of ITSP revenues used to support Commission activities has nearly tripled.[89] ITTA contends that regulatory fees for wireless carriers have decreased and the disparity in regulatory fee treatment between wireline and wireless services continues to widen.[90] ITTA recommends that the Commission extend the process by which it added interconnected Voice over Internet Protocol ("VoIP") providers to the ITSP category and also include wireless providers in the ITSP category.[91] We seek comment on this recommendation.

41. Relative to other services that pay regulatory fees, we recognize that the ITSP market has changed since the Commission calculated the cost of ITSP regulation in FY 1997. We agree that it is appropriate to review our methodology for assessing regulatory fees on ITSPs. We seek comment on whether ITSPs current share of regulatory fees, which has not been revised significantly since 1997, is appropriate. Commenters should discuss the ITSP market and how it has changed since 1997 relative to the other services that pay regulatory fees such as wireless and broadcast services. Commenters suggesting a change in the proportionate share for ITSPs should propose a methodology. For example, would it be more appropriate to return to the original Schedule of Regulatory Fees and assess fees per 1,000 access lines? We note that we have experienced significant success and accuracy with a number-based approach for CMRS. Would number of access lines be most appropriate?

2. International and Interstate Toll Services

42. International and interstate toll calls can originate from either a wireless or a landline telephone; if such calls are made from a wireless telephone they are considered wireless revenue and not interstate or international revenue for regulatory fee purposes. Commercial mobile radio services ("CMRS") regulatory fees are determined on a per unit basis rather than on a revenue basis. For FY 1995, the CMRS regulatory fee was $0.15 per unit; for FY 2007, the CMRS regulatory fee was $0.18 per unit. Thus, international and interstate toll calls made on a wireless telephone, even if billed separately to the customer as international or interstate toll calls, are not paid on a revenue basis for CMRS regulatory fee purposes, but on a subscriber basis. Whereas, international and interstate toll calls made on a landline telephone are considered international and interstate revenue for ITSP regulatory fee purposes. We seek comment on whether this disparity is equitable.

43. Specifically, we seek comment on whether we should include interstate and international toll calls made from wireless handsets as international and interstate revenue for regulatory fee purposes. Commenters should also discuss whether, for example, a wireless international call to Canada or Mexico, even though the call would be carried for the most part on the wireline network, should be considered wireless revenue and feeable for CMRS regulatory fee purposes. To the extent that wireless carriers bill their customers a separate

[89] ITTA Reply Comments at 1-2.

[90] ITTA Reply Comments at 2.

[91] ITTA Reply Comments at 4-5.

charge for the international call (apart from minutes), should this be considered a call subject to regulatory fees regardless of whether the call originated from a landline or a wireless handset? Commenters should discuss why including (or excluding) revenues from interstate and international calls is reasonable. Commenters should also address the effect on CMRS and ITSP regulatory fees if wireless revenues from interstate and international toll calls become subject to regulatory fees. We seek comment on this proposal.

3. Regulatory Fee Obligations for Digital Broadcasters

44. After February 17, 2009, full-power television broadcast stations must transmit only in digital signals and may no longer transmit analog signals.[92] Digital television ("DTV") licensees are subject to section 8 application fees but our current schedule of regulatory fees does not include a specific service category for digital broadcasters.[93] Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at present is for their analog facility. A licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum currently has no regulatory fee obligation.

45. In our *FY 2005 Report and Order* we stated that we had sought comment on whether to establish a regulatory fee category for digital broadcasters but received no comments on the issue and therefore we did not establish regulatory fee obligations for digital broadcasters.[94] At that time we recognized the Commission's initiatives to transition analog broadcasters to digital spectrum and that we should address these issues from a regulatory fee perspective. We seek comment on whether we should now establish a specific regulatory fee service category for digital broadcasters.

46. Our rules do not state that regulatory fees are required for analog licenses only,[95] but we have consistently assessed regulatory fees on analog licenses only.[96] We seek comment on whether we should clarify that regulatory fees are required for analog and digital broadcasters, based on their markets. We seek comment on whether a rule change is necessary under these circumstances. We do not intend to assess regulatory fees for both digital and analog licenses from a licensee in the process of transitioning from analog to digital. Our goal is to efficiently and seamlessly account for the collection of fee revenue from digital broadcasters without harming early transitioners to digital spectrum or late transitioners from analog spectrum. We seek comment on ways to achieve this goal.

4. Per-Subscriber Fees for Video Services in Addition to Cable Television Operators

47. We seek comment on whether service providers other than cable operators, such as incumbent local exchange carriers (ILEC) providing video service, should also pay regulatory

[92] 47 U.S.C. §§ 309(j)(14) and 337(e).

[93] *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03-83 , Report and Order, 18 FCC Rcd 15985, 15993, ¶ 25 (2003) ("*FY 2003 Report and Order*").

[94] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12266-67, ¶ 23 (2005) ("*FY 2005 Report and Order*").

[95] 47 C.F.R. § 1.1153, "Schedule of annual regulatory fees and filing locations for mass media services" provides the fee amounts due for television stations based on the market where the station is broadcast.

[96] The table in section 1.1153 of our rules does, however, refer to "UHF" and "VHF".

fees on a per-subscriber basis or otherwise.[97] For example, should ILECs as well as cable providers pay a per-subscriber regulatory fee because ILECs are providing a service similar to cable service? Presently, ILECs that provide video service are not subject to regulatory fees for their video service, unless they are classified as a cable provider. We seek comment on this proposal.

a. Internet Protocol TV ("IPTV")

48. From the customer's perspective, there is likely not much difference between IPTV and other video services, such as cable service. The IPTV service could be offered to the customer bundled with the customer's internet and landline telephone service.[98] We seek comment on whether this video service should be subject to regulatory fees, and if so, should the IPTV provider count this service for regulatory fee purposes in the same manner as cable services, which is on a subscriber basis? Also, we seek comment on the likely outcome of taking no regulatory fee action for IPTV. Commenters should discuss the impact on cable services and the equities of treating similar services differently for regulatory fee purposes if no regulatory fees are imposed.

49. We also note that any carrier offering this service would pay regulatory fees for the interstate telecommunications service that may be offered together with the IPTV service. We tentatively conclude that in such a situation, the carrier should pay regulatory fees for the ITSP service exclusive of the IPTV service, *i.e.*, the IPTV revenues should not be combined into the ITSP revenue-based regulatory fee. We seek comment on this tentative conclusion. Commenters should discuss the ease or difficulty of separating the ITSP revenues from the IPTV revenues.

b. Direct Broadcast Service ("DBS") Providers

50. Currently cable service providers pay approximately $0.75 per subscriber in regulatory fees; DBS providers do not pay a per-subscriber fee. Previously, the Commission declined to adopt the same per-subscriber fee for DBS.[99] We seek comment on whether we should impose the same per subscriber fee on DBS that cable providers pay, or continue to assess a space station regulatory fee for the DBS industry and a subscriber-based regulatory fee structure for the cable industry.

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[97] *See* "FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report," MB Docket No. 07-269, Press Release, Nov. 27, 2007.

[98] According to AT&T, "[t]he AT&T U-verse portfolio of IP-based services integrates digital video, AT&T Yahoo! High Speed Internet U-verse Enabled, and in the future, voice over IP services." *See* http://www.att.com/gen/press-room?pid=5838.

[99] *FY 2005 Report and Order*, 20 FCC Rcd at 12264, ¶¶ 10-11.

5. Cable Television Services – Calculation of Subscriber Numbers

51. In FY 1995, when the Commission assessed payments of $0.49 per cable television subscriber, the Commission explained how cable service providers should calculate their number of subscribers: [100]

> 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.[101]

52. Cable service providers are still required to pay regulatory fees on a per subscriber basis.[102] We recognize that it may be difficult to identify the number of subscribers that reside in multiple dwelling units ("MDUs") (*e.g.*, condominiums, apartment buildings, university dormitories) when residents do not contract directly with a cable service provider. We seek comment on whether the "bulk rate" calculation described above should be modified to more accurately reflect the number of subscribers in the MDU. If the "bulk rate" calculation does need to be revised, commenters should recommend a more accurate way to calculate the number of subscribers in a MDU. We note that if some cable operators are undercounting their subscribers, the remaining cable operators are paying more. Commenters should discuss whether the "bulk rate" charge is consistent with the requirement that cable service providers pay regulatory fees on the number of subscribers.[103], and if not, commenters should discuss why it is important for "bulk rate" counts to remain separate from subscriber counts. We seek comment on this proposal.

6. Private Land Mobile Radio Services ("PLMRS")

53. PLMRS, which includes both Exclusive and Shared Services, is contending with a declining unit base and an ever increasing regulatory fee obligation. In its FY 2003 *Report and Order*, the Commission decided to freeze the Commercial Mobile Radio Service (CMRS) Messaging fee rate at the FY 2002 level.[1] The Commission argued in FY 2003 that because the decline in the CMRS Messaging industry was a unique circumstance, and it was not a temporary phenomenon, it was appropriate to provide such relief. However, the PLMRS industry may not be the only industry that is facing a permanent declining unit base. As a result, it may be

[100] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, Report and Order, 10 FCC Rcd 13512, 13579, Appendix H, ¶ 28 (1995).

[101] *Id.*

[102] 47 C.F.R. § 1.1155.

[103] We recognize that there may be other methods to determine the number of subscribers in an MDU, such as counting the number of set top boxes or the premium channels ordered, that may be more accurate than the "bulk rate" calculation.

necessary for the Commission to consider guidelines for assessing regulatory fees on such industries. For example, what would constitute a declining industry, and under what basis should the Commission provide regulatory fee relief? Should the Commission propose to provide regulatory fee relief in any and all circumstances in which an industry is in decline? We seek comment on this proposal.

7. Other Telecommunications Services

54. We seek comment on whether to add, delete, or reclassify services. We seek comment on adding other services that were not included in our regulatory fee schedule initially that should be included now. For example, should we should we assess regulatory fees on Wi-Fi service providers? Are there other services available today that should share the regulatory fee burden and thus lessen the burden on the more established services? If so, how should we assess the regulatory fees on these services? We also seek comment on whether there are fee categories that should be eliminated.

55. *International Fixed Public Radio.*[104] There is only one licensee in this category and we do not expect any additional licensees or applications. We propose to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. We seek comment on this proposal.

56. *International High Frequency Broadcast Stations.*[105] There are only 25 licensed stations in this category. Most of these licensees are tax-exempt organizations that are exempt from payment of regulatory fees. We propose to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. We seek comment on this proposal.

57. *General Mobile Radio Service ("GMRS").* GMRS is a two-way radio service licensed to individuals.[106] Prospective licensees pay a $50 license application fee for a five-year license term as well as a $25 regulatory fee. Such costs may be larger than the price of the GMRS device. In addition, other individual radio devices, such as the Family Radio Service,[107] do not pay such fees. These issues may contribute to the low rate of compliance with our licensing requirements for GMRS. We therefore propose to eliminate the regulatory fees for

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[104] *See* 47 C.F.R. Part 23.

[105] *See* 47 C.F.R. Part 73, Subpart F.

[106] In 1988, the Commission amended the GMRS rules to provide flexibility to the individual user and limit eligibility for new GMRS licenses to individuals. *See Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service ("GMRS")*, Report and Order, PR Docket No. 87-265, 3 FCC Rcd 6554, 6554, ¶ 3 (1988).

[107] In 1996, the Commission established the Family Radio Service ("FRS") as a very short range, two-way voice personal radio service that provides an affordable and convenient means of communications among small groups of persons, including families, with minimal regulation. *See Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Voice Radio Service*, Report and Order, WT Docket No. 95-102, 11 FCC Rcd 12977, 12977, ¶ 2, 12983, ¶ 17, 12984, ¶ 19 (1996). The FRS shares seven frequencies in the 462 MHz band with the GMRS and has seven channels that are offset from GMRS channels in the 467 MHz band. Specifically, FRS channels 1-7 are also GMRS frequencies and FRS channels 8-14 are offset from GMRS frequencies.

GMRS devices. The application fee would continue to apply for this service. We seek comment on this proposal.

58. The above three services are perhaps more well known to the Commission, but it is possible that there may be additional services that should be consolidated or eliminated because they are based on outmoded technology. We seek comment on this issue.

IV. ADMINISTRATIVE AND OPERATIONAL ISSUES

59. In our *FY 2008 NPRM*, we sought comment on the administrative and operational processes used to collect the annual section 9 regulatory fees.[108] These issues do not affect the amount of regulatory fees parties are obligated to submit; rather the administrative and operational issues affect the process of submitting payment.

A. Use of Fee Filer

60. We strongly encourage regulatees to electronically file their FY 2008 regulatory fee payments via Fee Filer, rather than submitting payment with a completed hardcopy Form 159, Form 159-B, and/or Form 159-W.[109] The benefits of electronically filing via Fee Filer are expeditious payment submissions that are less expensive (no U.S. postage if paying online) and less prone to error. It also results in improved record keeping and payment reconciliation efforts, and reduces paperwork burdens on payers and Commission staff.

61. Traditionally, we have received hardcopy Form 159-Cs (Continuation Sheets) from our regulatees needing to make voluminous payment transactions. These voluminous payers will benefit by using Fee Filer. Fee Filer relieves regulatees of the need to mail several different pre-bills or to follow different filing instructions for different fees; and enables all fee obligations to be paid simply either online or by following pre-printed instructions on a Fee Filer-produced voucher.

62. Fee Filer accepts electronic credit card transactions of up to $99,999.99 and ACH payment transactions from a bank account of an unlimited dollar amount. Fee Filer also facilitates payment by check or wire transfer by producing a one-page Remittance Voucher Form 159-E which can be mailed to our lockbox bank.

B. Proposals for Notification and Collection of Regulatory Fees

63. In our *FY 2008 NPRM*, we sought comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees.[110] We did not receive comment on this issue. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures.[111] We will continue to provide public notices, fact sheets and all other relevant material on our website at http://www.fcc.gov/fees/regfees.html for the FY 2008 regulatory fee cycle.

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[108] *FY 2008 NPRM* at ¶ 9.

[109] Fee Filer can be accessed at http://www.fcc.gov/fees/feefiler.html.

[110] *FY 2008 NPRM* at ¶ 14.

[111] *Id.*

64. As a general practice, we will not send regulatory fee material to regulatees via surface mail. Regulatees without access to the Internet can receive public notices and other relevant material by mail upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480-3201, Option 4.

65. We will continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.[112] Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees.

1. Interstate Telecommunications Service Providers

66. In FY 2001, we began mailing pre-completed FCC Form 159-W assessments to carriers in an effort to assist them in paying their ITSP regulatory fee. The fee amount on FCC Form 159-W was calculated from the FCC Form 499-A worksheet. Beginning in FY 2004, we converted our usage of the FCC Form 159-W from an "assessment of amount due" to a pre-bill. We have successfully used the Form 159-W as a pre-billing instrument in the fiscal years following. In FY 2007 we started rounding lines 14 and 16 on the Form 159-W to the nearest dollar. We will continue rounding lines 14 and 16 in FY 2008.

2. Satellite Space Station Licensees

67. Beginning in FY 2004, we mailed regulatory fee pre-bills via surface mail to licensees in our two satellite space station service categories. Geostationary orbit space station ("GSO") licensees received bills requesting regulatory fee payment for satellites that were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received pre-bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year. In our *FY 2008 NPRM* we sought comment on continuing to mail prebills to the GSO and NGSO licensees.[113] We did not receive comment on this issue. We conclude that we will continue to mail pre-bills to our GSO and NGSO satellite space station categories.

3. Media Services Licensees

68. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[114] We will mail assessment

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[112] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

[113] *FY 2008 NPRM* at ¶ 20.

[114] Some of those refinements have been to provide licensees with a Commission-authorized web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. (continued….)

notifications to licensees to their primary record of contact populated in the Consolidated Database System and to their secondary record of contact, if available. We will continue to make the Commission-authorized web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need be.[115] Licensees opting not to file their fee payment electronically through Fee Filer must submit a completed hardcopy FCC Form 159 with their fee payment; *i.e.*, the assessment notifications cannot be used as a substitute for a completed Form 159.

4. Commercial Mobile Radio Service Cellular and Mobile Services Assessments

69. In the *FY 2008 NPRM* we sought comment on our practice of mailing assessment letters to CMRS providers using Numbering Resource Utilization Forecast ("NRUF") data.[116] We proposed using NRUF data based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[117] We proposed that the letters will not include Operating Company Numbers ("OCNs") with their respective assigned number counts, but rather, OCNs with an aggregate total of assigned numbers for each carrier. We did not receive comment on this issue. We therefore adopt our proposal.

70. The provider may correct its subscriber count if the number of subscribers on the assessment letter differs from the subscriber count the service provider provided on its NRUF form. The provider may return the assessment letter or contact the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change. If the provider does not correct the subscriber count, the section 9 regulatory fee payment should be based on the number of subscribers listed on that letter. We will review all amendments to assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the amended subscriber count.

71. An initial and a final assessment letter will be mailed to CMRS providers that have filed an NRUF form; some providers may not be sent assessment letters if they did not file the NRUF form. These providers shall compute their section 9 regulatory fee payment using the standard methodology[118] that is currently in place for CMRS Wireless services (*e.g*., compute their subscriber counts as of December 31, 2007), and submit their payment accordingly, either via Fee Filer, or attached to a completed hardcopy FCC Form 159. In the event that the

(Continued from previous page)
The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[115] The Commission-authorized web site for media services licensees is http://www.fccfees.com.

[116] *FY 2008 NPRM* at ¶ 24.

[117] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05-59 and 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, ¶¶ 38-44 (2005).

[118] Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2007* at 1 (rel. Aug. 2007).

Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

5. Cable Television Subscribers

72. In the *FY 2008 NPRM* we sought comment on whether we should continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier ("CUID") basis.[119] We also sought comment on whether we should continue to send email messages to the addresses in the Media Bureau's Cable Operations and Licensing System ("COALS") to notify cable television operators of the amount and due date of regulatory fees for basic cable television subscribers.[120] We did not receive comment on these issues. We therefore adopt these proposals. These practices have worked well for the Commission in the past and eased administrative burdens for the cable television industry.

6. Streamlined Regulatory Fee Payment Process for CMRS Cellular and Mobile Providers

73. In the *FY 2008 NPRM* we sought comment on whether we should continue the practice adopted in FY 2006[121] of streamlining the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making regulatory fee payments.[122] Instead, we would require CMRS providers to pay their regulatory fees only at the aggregate subscriber level, without having to identify their various call signs.[123] We also proposed to continue our practice of combining the CMRS cellular and CMRS mobile fee categories into one category.[124] AAPC, the only commenter addressing this issue, "strongly supports" our proposal to continue to allow reporting of aggregate subscriber levels for fee payment.[125] We therefore adopt our proposal. These streamlined procedures allow us to process payments more quickly and accurately.

119 *See FY 2008 NPRM* at para. 28.

120 *See id.* at para. 29.

121 *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092, 8105, ¶ 48 (2006).

122 *See FY 2008 NPRM* at para. 30.

123 *Id.*

124 *Id.*

125 AAPC Comments at 3.

V. PROCEDURAL MATTERS

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

74. Consistent with past practice, regulatees whose total FY 2008 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2008 regulatory fees.

2. Standard Fee Calculations and Payment Dates

75. The Commission will, for the convenience of payers, accept fee payments made in advance of the window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

a. Media Services

76. Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2007 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2007. In instances where a permit or license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the permit or license as of the fee due date.

b. Wireline (Common Carrier) Services

77. Regulatory fees must be paid for authorizations that were granted on or before October 1, 2007. In instances where a permit or license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the permit or license as of the fee due date.

c. Wireless Services

78. CMRS cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2007. The number of subscribers, units or circuits on December 31, 2007 will be used as the basis from which to calculate the fee payment.

79. The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment C) pay what we refer to as "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or 10-year term of initial license, and only pay regulatory fees again for the license at the time its next renewal. We include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts; however, we do not actually collect these fees on an annual basis.

d. Multichannel Video Programming Distributor Services (cable television operators and CARS licensees)

80. Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2007.[126] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2007. In instances where a CARS license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the license as of the fee due date.

e. International Services

81. Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2007. In instances where a license is transferred or assigned after October 1, 2007, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits, the payments of which are determined by the number of active circuits as of December 31, 2007.[127]

B. Enforcement

82. As a reminder to all licensees, section 159(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window.

83. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule[128] and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing

[126] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc*.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2006, rather than on a count as of December 31, 2006.

[127] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use ("IRU") basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe – International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the Commission's web-site at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf.

[128] *See* 47 C.F.R. § 1.1910.

charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 47 C.F.R. §1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

84. Our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[129] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

C. Final Paperwork Reduction Act of 1995 Analysis

85. This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

D. Congressional Review Act Analysis

86. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

E. Ex Parte Rules

87. *Permit-But-Disclose.* This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.[130] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments

[129] *See* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), and 1.1910.

[130] *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

presented is generally required.[131] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

88. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[132] interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.[133]

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

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

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

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131 *See* 47 C.F.R. § 1.1206(b)(2).

132 *See id*. §§ 1.415, 1.419.

133 *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

91. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

92. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format ("PDF") at: http://www.fcc.gov.

VI. ORDERING CLAUSES

93. Accordingly, IT IS ORDERED pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, and 303(r) that this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED.

94. IT IS FURTHER ORDERED that the FY 2008 section 9 regulatory fee assessment requirements ARE ADOPTED as specified herein.

95. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules ARE AMENDED as set forth in Appendix D, and the these rules shall become effective 30 days after publication in the Federal Register.

96. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis in Appendix B and the Final Regulatory Flexibility Analysis in Appendix A, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[1] the Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking*.[2] Written public comments were sought on the FY 2008 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[3]

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

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $312,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

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

3. No parties have raised significant issues in response to the IRFA.

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 and policies, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A "small business concern" is one which: (1) is independently

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Notice of Proposed Rulemaking, _____________("*FY 2008 NPRM*").

[3] 5 U.S.C. § 604.

[4] 5 U.S.C. § 603(b)(3).

[5] 5 U.S.C. § 601(6).

[6] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

5. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[8] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[10] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[11] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[12] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[13] Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entities, applicants and licensees, that may be affected by our action.

6. **Incumbent Local Exchange Carriers ("ILECs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[14] According to Commission data,[15] 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

7. **Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[16] According to Commission data,[17] 769 carriers have reported

[7] 15 U.S.C. § 632.

[8] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at p. 40 (July 2002).

[9] 5 U.S.C. § 601(4).

[10] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[11] 5 U.S.C. § 601(5).

[12] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

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

[14] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[15] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5-5 (June 2005) (hereinafter "*Trends in Telephone Service*").

[16] 13 C.F.R. § 121.201, NAICS code 517110.

that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1.500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by these rules.

8. **Local Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[18] According to Commission data,[19] 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by these rules.

9. **Toll Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[20] According to Commission data,[21] 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

10. **Payphone Service Providers ("PSPs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[22] According to Commission data,[23] 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

11. **Interexchange Carriers ("IXCs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications

(Continued from previous page)
[17] "Trends in Telephone Service" at Table 5.3.

[18] 13 C.F.R. § 121.201, NAICS code 517310.

[19] "Trends in Telephone Service" at Table 5.3.

[20] 13 C.F.R. § 121.201, NAICS code 517310.

[21] "Trends in Telephone Service" at Table 5.3.

[22] 3 C.F.R. § 121.201, NAICS code 517110.

[23] "Trends in Telephone Service" at Table 5.3.

Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[24] According to Commission data,[25] 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

12. **Operator Service Providers ("OSPs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[26] According to Commission data,[27] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

13. **Prepaid Calling Card Providers**. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[28] According to Commission data,[29] 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by these rules.

14. **800 and 800-Like Service Subscribers**.[30] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[31] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[32] According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of

[24] 13 C.F.R. § 121.201, NAICS code 517110.

[25] "Trends in Telephone Service" at Table 5.3.

[26] 13 C.F.R. § 121.201, NAICS code 517110.

[27] "Trends in Telephone Service" at Table 5.3.

[28] 13 C.F.R. § 121.201, NAICS code 517310.

[29] "Trends in Telephone Service" at Table 5.3.

[30] We include all toll-free number subscribers in this category, including those for 888 numbers.

[31] 13 C.F.R. § 121.201, NAICS code 517310.

[32] "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

15. **International Service Providers**. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.[33]

16. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[34] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[35] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[36] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

17. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[37] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[38] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[39] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

[33] 13 C.F.R. § 121.201 , NAICS codes 517410 and 517910.

[34] U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications;" http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[35] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410.

[36] *Id*. An additional 38 firms had annual receipts of $25 million or more.

[37] U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications;" http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[38] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910.

[39] *Id*. An additional 14 firms had annual receipts of $25 million or more.

18. **Wireless Telecommunications Carriers (except Satellite)**. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[40] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[41] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[42] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[43] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[44] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[45] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[46] Thus, we estimate that the majority of wireless firms are small.

19. **Internet Service Providers**. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others."[47] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[48] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[49] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of

[40] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http:// www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[41] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http:// www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http:// www.census.gov/epcd/naics02/def/NDEF517.HTM.

[42] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[43] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[44] *Id*. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[45] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[46] *Id*. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[47] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 518111, "On-Line Information Services."

[48] 13 C.F.R. § 121.201, NAICS code 518111.

[49] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

between $10 million and $24,999,999.[50] Thus, under this size standard, the great majority of firms can be considered small entities.

20. **Television Broadcasting**. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[51] The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts.[52] According to Commission staff review of the BIA Publications, Inc., Media Access Pro Television Database as of December 7, 200, about 825 (66 percent) of the 1,250 commercial television stations in the United States had revenues of $13 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business (control) affiliations[53] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

21. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

22. There are also 2,117 low power television stations ("LPTV").[54] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

23. **Radio Broadcasting**. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[55] Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public.[56]

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[50] *Id.*

[51] U.S. Census Bureau, 2002 NAICS Definitions, "515120 Television Broadcasting" (partial definition); http://www.census.gov/epcd/naics02/def/NDEF515.HTM.

[52] 13 C.F.R. § 121.201, NAICS code 515120.

[53] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 21.103(a)(1).

[54] *FCC News Release*, "Broadcast Station Totals as of September 30, 2007."

[55] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 515112).

[56] *Id.*

According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations[57] are included.[58] Our estimate, therefore likely overstates the number of small businesses that might be affected by the rules adopted herein.

24. **Auxiliary, Special Broadcast and Other Program Distribution Services.** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[59]

25. The Commission estimates that there are approximately 5,618 FM translators and boosters.[60] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($6.5 million for a radio station or $13.0 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.[61]

26. **Cable and Other Program Distribution**. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."[62] The SBA

[57] "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

[58] "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 C.F.R. § 121(a)(4).

[59] 13 C.F.R. § 121.201, NAICS codes 513111 and 513112.

[60] FCC News Release, "Broadcast Station Totals as of September 30, 2007."

[61] 15 U.S.C. § 632.

[62] U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution;" http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[63] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[64] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[65] Thus, under this size standard, the majority of firms can be considered small.

27. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[66] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[67] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[68] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have less than 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.[69] Thus, under this second size standard, most cable systems are small.

28. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[70] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[71] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small

[63] 13 C.F.R. § 121.201, NAICS code 517510.

[64] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[65] *Id*. An additional 61 firms had annual receipts of $25 million or more.

[66] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[67] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[68] 47 C.F.R. § 76.901(c).

[69] Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[70] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[71] 47 C.F.R. § 76.901(f); *see* Public Notice, "*FCC Announces New Subscriber Count for the Definition of Small Cable Operator*," 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

under this size standard.[72] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[73] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

29. **Open Video Services**. Open Video Service ("OVS") systems provide subscription services.[74] The SBA has created a small business size standard for Cable and Other Program Distribution.[75] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[76] Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

30. **Cable Television Relay Service**. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[77] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[78] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[79] Thus, under this size standard, the majority of firms can be considered small.

31. **Multichannel Video Distribution and Data Service ("MVDDS")**. MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an

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[72] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[73] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

[74] *See* 47 U.S.C. § 573.

[75] 13 C.F.R. § 121.201, NAICS code 517510.

[76] *See* http://www.fcc.gov/csb/ovs/csovscer.html .

[77] 13 C.F.R. § 121.201, NAICS code 517510.

[78] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[79] *Id*. An additional 61 firms had annual receipts of $25 million or more.

entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[80] These definitions were approved by the SBA.[81] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[82] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[83]

32. **Amateur Radio Service**. These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

33. **Aviation and Marine Services**. Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[84] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding

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[80] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, ¶ 252 (2002).

[81] *See* Letter from Hector V. Barreto, Administrator, SBA to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

[82] *See* "Multichannel Video Distribution and Data Service Auction Closes," *Public Notice*, 19 FCC Rcd 1834 (2004).

[83] *See* "Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63," *Public Notice*, 20 FCC Rcd 19807 (2005).

[84] 13 C.F.R. § 121.201, NAICS code 517212.

three years not to exceed $3 million dollars.[85] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

34. **Personal Radio Services**. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[86] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[87] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[88] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the rules adopted herein.

35. **Public Safety Radio Services**. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[89] There are a total of approximately 127,540 licensees in these services. Governmental

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[85] *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[86] 47 C.F.R. Part 90.

[87] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 C.F.R. Part 95.

[88] 13 C.F.R. § 121.201, NAICS Code 517212.

[89] 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 approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to (continued….)

entities[90] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[91]

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

36. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[92] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission on the FCC Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

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

(Continued from previous page)
this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 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.

[90] 47 C.F.R. § 1.1162.

[91] 5 U.S.C. § 601(5).

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

38. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[93] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[94] Further, in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 194-134, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[95] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq*., and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[96]

39. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[97] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[98] In the *NPRM*, we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

41. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances.

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[93] 47 C.F.R. § 1.1164.

[94] 47 C.F.R. § 1.1164(c).

[95] Public Law 104-134, 110 Stat. 1321 (1996).

[96] 31 U.S.C. § 7701(c)(2)(B).

[97] 47 C.F.R. § 1.1166.

[98] 5 U.S.C. § 603.

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

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

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules in the Further Notice of Proposed Rulemaking ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. This Notice seeks comment on ways the Commission can revise the regulatory fee schedule for various categories of services. The Commission would like to accomplish this in an efficient manner and without undue public burden.

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.[4]

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 and policies, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A "small business concern" is one which: (1) is independently

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] 5 U.S.C. 603(a).

[3] *Id.*

[4] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[5] 5 U.S.C. § 603(b)(3).

[6] 5 U.S.C. § 601(6).

[7] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

5. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[9] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[10] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[11] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[12] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[13] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[14] Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entities, applicants and licensees, that may be affected by our action.

6. **Incumbent Local Exchange Carriers ("ILECs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[15] According to Commission data,[16] 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

7. **Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[17] According to Commission data,[18] 769 carriers have reported

[8] 15 U.S.C. § 632.

[9] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at p. 40 (July 2002).

[10] 5 U.S.C. § 601(4).

[11] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[12] 5 U.S.C. § 601(5).

[13] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

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

[15] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[16] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5-5 (June 2005) (hereinafter "*Trends in Telephone Service*").

[17] 13 C.F.R. § 121.201, NAICS code 517110.

that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1.500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by these rules.

8. **Local Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[19] According to Commission data,[20] 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by these rules.

9. **Toll Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[21] According to Commission data,[22] 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

10. **Payphone Service Providers ("PSPs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[23] According to Commission data,[24] 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

11. **Interexchange Carriers ("IXCs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications

(Continued from previous page)

[18] "Trends in Telephone Service" at Table 5.3.

[19] 13 C.F.R. § 121.201, NAICS code 517310.

[20] "Trends in Telephone Service" at Table 5.3.

[21] 13 C.F.R. § 121.201, NAICS code 517310.

[22] "Trends in Telephone Service" at Table 5.3.

[23] 3 C.F.R. § 121.201, NAICS code 517110.

[24] "Trends in Telephone Service" at Table 5.3.

Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[25] According to Commission data,[26] 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

12. **Operator Service Providers ("OSPs")**. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[27] According to Commission data,[28] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

13. **Prepaid Calling Card Providers**. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[29] According to Commission data,[30] 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by these rules.

14. **800 and 800-Like Service Subscribers**.[31] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[32] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[33] According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of

[25] 13 C.F.R. § 121.201, NAICS code 517110.

[26] "Trends in Telephone Service" at Table 5.3.

[27] 13 C.F.R. § 121.201, NAICS code 517110.

[28] "Trends in Telephone Service" at Table 5.3.

[29] 13 C.F.R. § 121.201, NAICS code 517310.

[30] "Trends in Telephone Service" at Table 5.3.

[31] We include all toll-free number subscribers in this category, including those for 888 numbers.

[32] 13 C.F.R. § 121.201, NAICS code 517310.

[33] "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

15. **International Service Providers**. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.[34]

16. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[35] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[36] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[37] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

17. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[38] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[39] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[40] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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[34] 13 C.F.R. § 121.201 , NAICS codes 517410 and 517910.

[35] U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications;" http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[36] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410.

[37] *Id*. An additional 38 firms had annual receipts of $25 million or more.

[38] U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications;" http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[39] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910.

[40] *Id*. An additional 14 firms had annual receipts of $25 million or more.

18. **Wireless Telecommunications Carriers (except Satellite)**. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[41] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[42] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[43] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[44] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[45] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[46] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[47] Thus, we estimate that the majority of wireless firms are small.

19. **Internet Service Providers**. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others."[48] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[49] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[50] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of

[41] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http:// www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[42] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http:// www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http:// www.census.gov/epcd/naics02/def/NDEF517.HTM.

[43] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[44] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[45] *Id*. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[46] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[47] *Id*. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[48] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 518111, "On-Line Information Services."

[49] 13 C.F.R. § 121.201, NAICS code 518111.

[50] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

between $10 million and $24,999,999.[51] Thus, under this size standard, the great majority of firms can be considered small entities.

20. **Television Broadcasting**. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[52] The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts.[53] According to Commission staff review of the BIA Publications, Inc., Media Access Pro Television Database as of December 7, 200, about 825 (66 percent) of the 1,250 commercial television stations in the United States had revenues of $13 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business (control) affiliations[54] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

21. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

22. There are also 2,117 low power television stations ("LPTV").[55] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

23. **Radio Broadcasting**. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[56] Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public.[57]

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[51] *Id.*

[52] U.S. Census Bureau, 2002 NAICS Definitions, "515120 Television Broadcasting" (partial definition); http://www.census.gov/epcd/naics02/def/NDEF515.HTM.

[53] 13 C.F.R. § 121.201, NAICS code 515120.

[54] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 21.103(a)(1).

[55] *FCC News Release*, "Broadcast Station Totals as of September 30, 2007."

[56] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 515112).

[57] *Id.*

According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations[58] are included.[59] Our estimate, therefore likely overstates the number of small businesses that might be affected by the rules adopted herein.

24. **Auxiliary, Special Broadcast and Other Program Distribution Services.** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[60]

25. The Commission estimates that there are approximately 5,618 FM translators and boosters.[61] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($6.5 million for a radio station or $13.0 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.[62]

26. **Cable and Other Program Distribution**. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."[63] The SBA

[58] "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

[59] "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 C.F.R. § 121(a)(4).

[60] 13 C.F.R. § 121.201, NAICS codes 513111 and 513112.

[61] FCC News Release, "Broadcast Station Totals as of September 30, 2007."

[62] 15 U.S.C. § 632.

[63] U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution;" http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[64] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[65] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[66] Thus, under this size standard, the majority of firms can be considered small.

27. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[67] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[68] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[69] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have less than 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.[70] Thus, under this second size standard, most cable systems are small.

28. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[71] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[72] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small

[64] 13 C.F.R. § 121.201, NAICS code 517510.

[65] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[66] *Id*. An additional 61 firms had annual receipts of $25 million or more.

[67] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[68] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[69] 47 C.F.R. § 76.901(c).

[70] Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[71] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[72] 47 C.F.R. § 76.901(f); *see* Public Notice, "*FCC Announces New Subscriber Count for the Definition of Small Cable Operator*," 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

under this size standard.[73] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[74] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

29. **Open Video Services**. Open Video Service ("OVS") systems provide subscription services.[75] The SBA has created a small business size standard for Cable and Other Program Distribution.[76] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[77] Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

30. **Cable Television Relay Service**. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[78] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[79] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[80] Thus, under this size standard, the majority of firms can be considered small.

31. **Multichannel Video Distribution and Data Service ("MVDDS")**. MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an

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[73] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2; Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[74] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

[75] *See* 47 U.S.C. § 573.

[76] 13 C.F.R. § 121.201, NAICS code 517510.

[77] *See* http://www.fcc.gov/csb/ovs/csovscer.html .

[78] 13 C.F.R. § 121.201, NAICS code 517510.

[79] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[80] *Id*. An additional 61 firms had annual receipts of $25 million or more.

entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[81] These definitions were approved by the SBA.[82] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[83] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[84]

32. **Amateur Radio Service**. These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

33. **Aviation and Marine Services**. Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[85] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding

[81] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, ¶ 252 (2002).

[82] *See* Letter from Hector V. Barreto, Administrator, SBA to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

[83] *See* "Multichannel Video Distribution and Data Service Auction Closes," *Public Notice*, 19 FCC Rcd 1834 (2004).

[84] *See* "Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63," *Public Notice*, 20 FCC Rcd 19807 (2005).

[85] 13 C.F.R. § 121.201, NAICS code 517212.

three years not to exceed $3 million dollars.[86] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

34. **Personal Radio Services**. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[87] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[88] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[89] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the rules adopted herein.

35. **Public Safety Radio Services**. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[90] There are a total of approximately 127,540 licensees in these services.

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[86] *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[87] 47 C.F.R. Part 90.

[88] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 C.F.R. Part 95.

[89] 13 C.F.R. § 121.201, NAICS Code 517212.

[90] 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 approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to (continued….)

Governmental entities[91] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[92]The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[93] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[94] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[95] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[96]

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

36. The Commission is concerned that some entities are paying too much and others are not paying enough regulatory fees. In this FNPRM, the Commission seeks comment on ways to modify the regulatory fee rules to better reflect the current industry and offered services. In addition, the Commission is concerned with rule non-compliance. The Commission could reduce such noncompliance by various means, including adopting filing requirements for international bearer circuits for non-common carriers. Common carriers already have filing requirements.

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

37. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small

(Continued from previous page)
this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 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.

[91] 47 C.F.R. § 1.1162.

[92] 5 U.S.C. § 601(5).

[93] 5 U.S.C. § 603(b)(3).

[94] 5 U.S.C. § 601(6).

[95] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[96] 15 U.S.C. § 632.

entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[97] The Commission is seeking comment on ways to revise the regulatory fees to possibly include more entities and to reduce or increase the fee burden on certain fee categories. The Commission is also seeking comment on reducing international bearer circuit regulatory fee non-compliance and close loopholes in the Commission's rules. It is possible that additional filing requirements for non-common carriers will be considered, with respect to international bearer circuits. These filing requirements already apply to common carriers. There may be other proposals offered by commenters to add or reduce regulatory fees or to reduce non-compliance with our rules. Such proposals may include reporting or recordkeeping requirements. It is important that all entities bear their required share of regulatory fees; otherwise, the companies that comply with the rules must pay for those that refuse to comply.

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

38. None.

[97] 5 U.S.C. § 603.

APPENDIX C

List of Commenters

Initial Comments

Party	Abbreviated Name
American Association of Paging Carriers	AAPC
AT&T, Inc.	AT&T
Global Crossing North America, Inc.	Global Crossing
Level 3 Communications, LLC	Level 3
Multicultural Radio Broadcasting Licensee, LLC and Way Broadcasting Licensee, LLC	MRB
Pacific Crossing Limited and PC Landing Corp.	Pacific
PCIA – The Wireless Infrastructure Association	PCIA
Satellite Industry Association	SIA
Tata Communications (US) Inc.	Tata

Reply Comments

Party	Abbreviated Name
AT&T Inc.	AT&T
Brasil Telecom of America, Hibernia Atlantic U.S. LLC, Columbus Networks USA, Inc., ARCOS-1 USA, Inc., A.SUR Net, Inc.	Joint Commenters
Chisholm Trail Broadcasting Co.	CTBC
Enterprise Wireless Alliance	Enterprise
Global Crossing North America, Inc.	Global Crossing
Independent Telephone and Telecommunications Alliance	ITTA
Level 3 Communications, LLC	Level 3
Pacific Crossing Limited and PC Landing Corp.	Pacific
Quest Communications International, Inc.	Quest

Reliance Globalcom Limited	Reliance
Telstra Incorporated	Telstra
Verizon	Verizon

Parties filing initial comments in response to VSNL Petition, RM-11312

Party	Abbreviated Name
Apollo Submarine Cable System, Inc.	Apollo
AT&T, Inc.	AT&T
Flag Telecom Group Limited	Flag
Hibernia Atlantic	Hibernia
Level 3 Communications, LLC	Level 3
Satellite Industry Association	SIA

Parties filing reply comments to VSNL Petition, RM-11312

Apollo Submarine Cable System, Inc.	Apollo
ARCOS-1 USA, Inc., *et al*	Joint Commenters
AT&T, Inc.	AT&T
Level 3 Communications, LLC	Level 3
Versión	Versión
Quest Communications Internacional	Qwest
VSNL Communications (US) Inc.	VSNL

ATTACHMENT A

Sources of Payment Unit Estimates for FY 2008

In order to calculate individual service fees for FY 2008, we adjusted FY 2007 payment units for each service to more accurately reflect expected FY 2008 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2008 estimates with actual FY 2007 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2008 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2008 payment units are based on FY 2007 actual payment units, it does not necessarily mean that our FY 2008 projection is exactly the same number as FY 2007. We have either rounded the FY 2008 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau ("WTB") projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 07 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 07 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2007 payment units.
Broadcast Auxiliaries	Based on actual FY 2007 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2007 payment units.

Cable Television Relay Service ("CARS") Stations	Based on data from Media Bureau's COALS database and actual FY 2007 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2007 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2007, the Wireline Competition Bureau projected the amount of calendar year 2007 revenue that will be reported on 2008 FCC Form 499-A worksheets in April, 2008.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2007 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2007 payment units.
International Bearer Circuits	Based on IB reports and actual FY 2007 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on IB reports and actual FY 2007 payment units.

ATTACHMENT B

Calculation of FY 2008 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2008 Payment Units	Years	FY 2007 Revenue Estimate	Pro-Rated FY 2008 Revenue Require-ment	Computed New FY 2008 Regulatory Fee	Round ed New FY 08 Regula -tory Fee	Expected FY 2008 Revenue
PLMRS (Exclusive Use)	1,150	10	437,500	469,918	41	40	460,000
PLMRS (Shared use)	11,500	10	2,325,000	2,497,278	22	20	2,300,000
Microwave	4,900	10	1,740,000	1,868,931	38	40	1,960,000
218-219 MHz (Formerly IVDS)	3	10	1,650	1,772	59	60	1,800
Marine (Ship)	8,400	10	800,000	859,278	10	10	840,000
GMRS	14,000	5	400,000	429,639	6	5	350,000
Aviation (Aircraft)	7,500	10	440,000	472,603	6	5	375,000
Marine (Coast)	310	10	108,000	116,003	37	35	108,500
Aviation (Ground)	1,700	10	165,000	177,226	10	10	170,000
Amateur Vanity Call Signs	15,000	10	171,990	184,734	1.23	1.23	184,500
AM Class A	65	1	210,800	227,355	3,498	3,500	227,500
AM Class B	1,564	1	2,546,375	2,740,081	1,752	1,750	2,737,000
AM Class C	935	1	890,150	963,919	1,031	1,025	958,375
AM Class D	1,706	1	2,983,750	3,237,984	1,898	1,900	3,241,400
FM Classes A, B1 & C3	3,040	1	6,281,025	6,788,261	2,233	2,225	6,764,000
FM Classes B, C, C0, C1 & C2	3,043	1	7,655,100	8,261,311	2,715	2,725	8,292,175
AM Construction Permits	95	1	26,000	39,253	413	415	39,425
FM Construction Permits[1]	299	1	117,875	179,400	600	600	179,400
Satellite TV	127	1	137,500	147,961	1,165	1,175	149,225
Satellite TV Construction Permit	3	1	1,650	1,789	596	595	1,785

Fee Category	FY 2008 Payment Units	Years	FY 2007 Revenue Estimate	Pro-Rated FY 2008 Revenue Require-ment	Computed New FY 2008 Regulatory Fee	Rounded New FY 08 Regula-tory Fee	Expected FY 2008 Revenue
VHF Markets 1-10	42	1	2,764,900	2,983,938	71,046	71,050	2,984,100
VHF Markets 11-25	57	1	2,827,350	3,051,067	53,527	53,525	3,050,925
VHF Markets 26-50	77	1	2,392,775	2,581,765	33,529	33,525	2,581,425
VHF Markets 51-100	118	1	2,300,000	2,480,777	21,024	21,025	2,480,950
VHF Remaining Markets	195	1	1,014,750	1,093,312	5,607	5,600	1,092,000
VHF Construction Permits [1]	4	1	15,375	22,400	5,600	5,600	22,400
UHF Markets 1-10	91	1	1,788,150	1,932,551	21,237	21,225	1,931,475
UHF Markets 11-25	82	1	1,478,200	1,597,692	19,484	19,475	1,596,950
UHF Markets 26-50	113	1	1,242,000	1,343,975	11,894	11,900	1,344,700
UHF Markets 51-100	168	1	1,058,400	1,142,771	6,802	6,800	1,142,400
UHF Remaining Markets	193	1	320,250	347,204	1,799	1,800	347,400
UHF Construction Permits[1]	18	1	38,500	32,400	1,800	1,800	32,400
Broadcast Auxiliaries	27,600	1	270,000	251,048	9	10	276,000
LPTV/Trans-lators/Boosters/ Class A TV	3,500	1	1,173,000	1,274,067	364	365	1,277,500
CARS Stations	750	1	144,300	155,598	207	205	153,750
Cable TV Systems	64,800,000	1	48,375,000	52,061,017	0.80341	0.80	51,840,000
Interstate Tele-communication Svc. Providers [3]	$46,700,000,000	1	135,660,000	146,636,961	0.00313998	0.00314	146,638,000
CMRS Mobile Cellular Svcs.	260,000,000	1	41,220,000	43,917,284	0.1689	0.170	44,200,000
CMRS Messag. Services	7,000,000	1	600,000	560,000	0.080	0.080	560,000

Fee Category	FY 2008 Payment Units	Years	FY 2007 Revenue Estimate	Pro-Rated FY 2008 Revenue Require-ment	Computed New FY 2008 Regulatory Fee	Round ed New FY 08 Regula -tory Fee	Expected FY 2008 Revenue
BRS[2]	1,700	1	422,500	501,500	295	295	501,500
LMDS	335	1	133,250	98,825	295	295	98,825
International Bearer Circuits	8,750,000	1	7,560,000	8,149,636	.0931	.93	8,137,500
International Public Fixed	1	1	1,875	2,014	2,014	2,025	2,025
Earth Stations	4,000	1	721,500	786,409	197	195	780,000
International HF Broadcast	5	1	3,975	4,288	858	860	4,300
Space Stations (Geostationary)	85	1	9,391,200	10,140,209	119,297	119,300	10,140,500
Space Stations (Non-Geostationary	6	1	698,850	754,556	125,759	125,750	754,500
****** Total Estimated Revenue to be Collected			291,055,465	313,567,960			313,311,610
****** Total Revenue Requirement			290,295,160	312,000,000			312,000,000
Difference			760,305	1,567,960			1,311,610

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

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, ¶ 6 (2004).

[3] Beginning in FY 2008, regulatory fees for IVoIP will be included as part of the Interstate Telecommunications Service Provider (ITSP) fee, and these fees will be collected at the same time as ITSP fees are collected.

ATTACHMENT C

FY 2008 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	40
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	60
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	35
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.23
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21) Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	295 295
AM Radio Construction Permits	415
FM Radio Construction Permits	600
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	71,050
Markets 11-25	53,525
Markets 26-50	33,525
Markets 51-100	21,025
Remaining Markets	5,600
Construction Permits	5,600

Fee Category	Annual Regulatory Fee (U.S. $'s)
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	21,225
Markets 11-25	19,475
Markets 26-50	11,900
Markets 51-100	6,800
Remaining Markets	1,800
Construction Permits	1,800
Satellite Television Stations (All Markets)	1,175
Construction Permits – Satellite Television Stations	595
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	205
Cable Television Systems (per subscriber) (47 CFR part 76)	.80
Interstate Telecommunication Service Providers (per revenue dollar)	.00314
Earth Stations (47 CFR part 25)	195
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	119,300
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	125,750
International Bearer Circuits (per active 64KB circuit)	.93
International Public Fixed (per call sign) (47 CFR part 23)	2,025
International (HF) Broadcast (47 CFR part 73)	860

FY 2008 SCHEDULE OF REGULATORY FEES (continued)

FY 2008 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$650	$500	$450	$525	$600	$775
25,001 – 75,000	$1,325	$1,025	$650	$775	$1,225	$1,375
75,001 – 150,000	$1,975	$1,275	$875	$1,300	$1,675	$2,550
150,001 – 500,000	$2,975	$2,175	$1,325	$1,550	$2,600	$3,325
500,001 – 1,200,000	$4,300	$3,325	$2,200	$2,575	$4,125	$4,900
1,200,001 – 3,000,00	$6,600	$5,100	$3,300	$4,125	$6,700	$7,850
>3,000,000	$7,925	$6,125	$4,175	$5,150	$8,550	$10,200

ATTACHMENT D

Factors, Measurements, and Calculations that go into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane ("RMS") figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3[2]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50-50) propagation curves specified in 47 C.F.R. § 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

[1] 47 C.F.R. §§ 73.150 and 73.152.

[2] *See Map of* Estimated *Effective Ground Conductivity in the United States*, 47 C.F.R. § 73.190 Figure R3.

[3] 47 C.F.R. § 73.313.

ATTACHMENT E

FY 2007 Schedule of Regulatory Fees

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	40
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	55
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	30
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.17
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license sign) (47 CFR part 21) Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	325 325
AM Radio Construction Permits	400
FM Radio Construction Permits	575
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	64,300
Markets 11-25	46,350
Markets 26-50	31,075
Markets 51-100	20,000
Remaining Markets	5,125
Construction Permits	5,125
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	19,650

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 11-25	19,450
Markets 26-50	10,800
Markets 51-100	6,300
Remaining Markets	1,750
Construction Permits	1,750
Satellite Television Stations (All Markets)	1,100
Construction Permits – Satellite Television Stations	550
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	345
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	185
Cable Television Systems (per subscriber) (47 CFR part 76)	.75
Interstate Telecommunication Service Providers (per revenue dollar)	.00266
Earth Stations (47 CFR part 25)	185
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)	109,200
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	116,475
International Bearer Circuits (per active 64KB circuit)	1.05
International Public Fixed (per call sign) (47 CFR part 23)	1,875
International (HF) Broadcast (47 CFR part 73)	795

FY 2007 SCHEDULE OF REGULATORY FEES (continued)

FY 2007RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$625	$475	$400	$475	$575	$725
25,001 – 75,000	$1,225	$925	$600	$725	$1,150	$1,250
75,001 – 150,000	$1,825	$1,150	$800	$1,200	$1,600	$2,300
150,001 – 500,000	$2,750	$1,950	$1,200	$1,425	$2,475	$3,000
500,001 – 1,200,000	$3,950	$2,975	$2,000	$2,375	$3,900	$4,400
1,200,001 – 3,000,00	$6,075	$4,575	$3,000	$3,800	$6,350	$7,025
>3,000,000	$7,275	$5,475	$3,800	$4,750	$8,075	$9,125

APPENDIX D

Rule Changes

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

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:
Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

2. Section 1.1152 is revised to read as follows:

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

Exclusive use services (per license)	Fee Amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
a)New, Renew/Mod (FCC 601 & 159)	$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

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

220 MHz Nationwide	$40.00	FCC
a)New, Renew/Mod		P.O. Box 979097
(FCC 601 & 159)		St. Louis, MO 63197-9000
b)New, Renew/Mod	$40.00	FCC
(Electronic Filing)		P.O. Box 979097
(FCC 601 & 159)		St. Louis, MO 63197-9000
c)Renewal Only	$40.00	FCC
(FCC 601 & 159)		P.O. Box 979097
		St. Louis, MO 63197-9000
d)Renewal Only	$40.00	FCC
(Electronic Filing)		P.O. Box 979097
(FCC 601 & 159)		St. Louis, MO 63197-9000
2. Microwave (47 CFR Pt. 101) (Private)		
a)New, Renew/Mod	$40.00	FCC
(FCC 601 & 159)		P.O. Box 979097
		St. Louis, MO 63197-9000
b)New, Renew/Mod	$40.00	FCC
(Electronic Filing)		P.O. Box 979097
(FCC 601 & 159)		St. Louis, MO 63197-9000
c)Renewal Only	$40.00	FCC
(FCC 601 & 159)		P.O. Box 979097
		St. Louis, MO 63197-9000
d)Renewal Only	$40.00	FCC
(Electronic Filing)		P.O. Box 979097
(FCC 601 & 159)		St. Louis, MO 63197-9000
3. 218-219 MHz Service		
a)New, Renew/Mod	$60.00	FCC
(FCC 601 & 159)		P.O. Box 979097

		St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$60.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	$60.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$60.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

4. Shared Use Services

Land Mobile (Frequencies Below 470 MHz – except 220 MHz)		
a)New, Renew/Mod (FCC 601 & 159)	$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
General Mobile Radio Service		
a)New, Renew/Mod	$5.00	FCC

(FCC 605 & 159)		P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
Rural Radio (Part 22)		
a)New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	$20.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
Marine Coast		
a)New Renewal/Mod (FCC 601 & 159)	$35.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	$35.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	$35.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

d)Renewal Only (Electronic Filing) (FCC 601 & 159)	$35.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
Aviation Ground		
a)New, Renewal/Mod (FCC 601 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 601 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Only) (FCC 601 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
Marine Ship		
a)New, Renewal/Mod (FCC 605 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 605 & 159)	$10.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing)	$10.00	FCC P.O. Box 979097

(FCC 605 & 159)		St. Louis, MO 63197-9000
Aviation Aircraft		
a)New, Renew/Mod (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
c)Renewal Only (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
d)Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000
5. Amateur Vanity Call Signs a)Initial or Renew (FCC 605 & 159)	$1.23	FCC P.O. Box 979097 St. Louis, MO 63197-9000
b)Initial or Renew (Electronic Filing) (FCC 605 & 159)	$1.23	FCC P.O. Box 979097 St. Louis, MO 63197-9000
6. CMRS Mobile Services (per unit) (FCC 159)	$ .17[2]	FCC P.O. Box 979084 St. Louis, MO 63197-9000
7. CMRS Messaging Services	$ .08[3]	FCC

[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

[3] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

(per unit) (FCC 159)		P.O. Box 979084 St. Louis, MO 63197-9000
8. Broadband Radio Service (formerly MMDS and MDS)	$ 295	FCC, P.O. Box 979084 St. Louis, MO 63197-9000
9. Local Multipoint Distribution Service	$ 295	FCC, , P.O. Box 979084 St. Louis, MO 63197-9000

3. Section 1.1153 is revised to read as follows:

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

Radio [AM and FM] (47 CFR, Part 73)	**Fee Amount**	**Address**
1. AM Class A		
<=25,000 population	$650	FCC, Radio
25,001-75,000 population	$1,325	P.O. Box 979084
75,001-150,000 population	$1,975	St. Louis, MO
150,001-500,000 population	$2,975	63197-9000
500,001-1,200,000 population	$4,300	
1,200,001-3,000,000 population	$6,600	
>3,000,000 population	$7,925	
2. AM Class B		
<=25,000 population	$500	
25,001-75,000 population	$1,025	
75,001-150,000 population	$1,275	
150,001-500,000 population	$2,175	
500,001-1,200,000 population	$3,325	
1,200,001-3,000,000 population	$5,100	
>3,000,000 population	$6,125	
3. AM Class C		
<=25,000 population	$450	
25,001-75,000 population	$650	
75,001-150,000 population	$875	
150,001-500,000 population	$1,325	
500,001-1,200,000 population	$2,200	
1,200,001-3,000,000 population	$3,300	
>3,000,000 population	$4,175	

4.	AM Class D	
	<=25,000 population	$525
	25,001-75,000 population	$775
	75,001-150,000 population	$1,300
	150,001-500,000 population	$1,550
	500,001-1,200,000 population	$2,575
	1,200,001-3,000,000 population	$4,125
	>3,000,000 population	$5,150
5.	AM Construction Permit	$415
6.	FM Classes A, B1 and C3	
	<=25,000 population	$600
	25,001-75,000 population	$1,225
	75,001-150,000 population	$1,675
	150,001-500,000 population	$2,600
	500,001-1,200,000 population	$4,125
	1,200,001-3,000,000 population	$6,700
	>3,000,000 population	$8,550
7.	FM Classes B, C, C0, C1 and C2	
	<=25,000 population	$775
	25,001-75,000 population	$1,375
	75,001-150,000 population	$2,550
	150,001-500,000 population	$3,325
	500,001-1,200,000 population	$4,900
	1,200,001-3,000,000 population	$7,850
	>3,000,000 population	$10,200
8.	FM Construction Permits	$600

TV (47 CFR, Part 73)
VHF Commercial

1.	Markets 1 thru 10	$71,050	FCC, TV Branch
2.	Markets 11 thru 25	$53,525	P.O. Box 979084
3.	Markets 26 thru 50	$33,525	St. Louis, MO
4.	Markets 51 thru 100	$21,025	63197-9000
5.	Remaining Markets	$ 5,600	
6.	Construction Permits	$ 5,600	

UHF Commercial

1.	Markets 1 thru 10	$21,225	FCC,UHF Commercial
2.	Markets 11 thru 25	$19,475	P.O. Box 979084

3.	Markets 26 thru 50	$11,900	St. Louis, MO
4.	Markets 51 thru 100	$ 6,800	63197-9000
5.	Remaining Markets	$ 1,800	
6.	Construction Permits	$ 1,800	

Satellite UHF/VHF Commercial

1.	All Markets	$1,175	FCC Satellite TV
2.	Construction Permits	$ 595	P.O. Box 979084 St. Louis, MO 63197-9000

Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74)	$ 365	FCC, Low Power P.O. Box 979084 St. Louis, MO 63197-9000
Broadcast Auxiliary	$ 10	FCC, Auxiliary P.O. Box 979084 St. Louis, MO 63197-9000

4. Section 1.1154 is revised to read as follows:

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

Radio Facilities		**Fee Amount**	**Address**
1.	Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$40.00	FCC P.O. Box 979097 St. Louis, MO 63197-9000

Carriers

1.	Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A)	$ .00314	FCC, Carriers P.O. Box 979084 St. Louis, MO 63197-9000

5. Section 1.1155 is revised to read as follows:

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

		Fee Amount	**Address**
1.	Cable Television Relay Service	$205	FCC, Cable
2.	Cable TV System (per subscriber)	$ .80	P.O. Box 979084 St. Louis, MO 63197-9000

6. Section 1.1156 is revised to read as follows:

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

Radio Facilities	Fee Amount	Address
1. International (HF) Broadcast	$860	FCC, International P.O. Box 979084 St. Louis, MO 63197-9000
2. International Public Fixed	$2,025	FCC, International P.O. Box 979084 St. Louis, MO 63197-9000
Space Stations (Geostationary Orbit)	$119,300	FCC, Space Stations P.O. Box 979084 St. Louis, MO 63197-9000
Space Stations (Non-Geostationary Orbit)	$125,750	FCC, Space Stations P.O. Box 979084 St. Louis, MO 63197-9000
Earth Stations Transmit/Receive & Transmit Only (per authorization or registration)	$195	FCC, Earth Station P.O. Box 979084 St. Louis, MO 63197-9000
Carriers		
International Bearer Circuits (per active 64KB circuit or equivalent)	$ .93	FCC, International P.O. Box 979084 St. Louis, MO 63197-9000

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65

Today we conclude our proceeding to collect regulatory fees for Fiscal Year 2008 and initiate a Further Notice of Proposed Rulemaking to undertake our first comprehensive review of the regulatory fee methodology in a decade.

Over the last decade, the communications landscape has changed dramatically. We have seen tremendous growth in certain sectors, including cable, wireless, and satellite services, and the development of new technologies and ways of communicating. During this same period, other sectors, such as the wireline industry, have opened to competition, and benefited from deregulation.

Although the Commission has reorganized itself to keep pace with these technological and marketplace changes, our regulatory fee structure has remained static. We have not made any significant changes to the regulatory fee methodology in a decade. During that time, certain communications industries have been burdened with a greater share of the Commission's regulatory fees while others have seen their share decrease. I question whether these relative burdens remain reasonable and equitable in light of the significant market changes since then.

I believe it is important to examine the Commission's regulatory fee structure in a comprehensive manner. Payment of the Commission's regulatory fee structure is a "zero sum game." Changes to the fees paid by one sector will impact the fees paid by others. Through the Further Notice, we will explore ways to ensure that all services pay their fair share of the costs of the Commission's enforcement activities, policy and rulemaking activities, user information services, and international activities.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65

I am pleased that at long last we are initiating a broad-based review of our regulatory fee rules under Section 9 of the Communications Act. This is something I have called for repeatedly over the years. It is hard to believe that we are still assessing fees based on the communications marketplace as it existed in 1994. It's as if we regulated the record industry and still assessed fees based on the number of CDs sold in retail stores in 1994, before the advent of digital downloads. The world—and the way we regulate— has changed dramatically. It's time for our regulatory fees to change as well.

I am also pleased that we are finally moving to a resolution of the submarine cable issue. Today's item correctly concludes that the current methodology needs to be fixed and sets a short timeframe for action. We've kicked this can down the road for too long. I look forward to working with my colleagues and the affected stakeholders to develop a methodology that better reflects today's marketplace.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65

Through this Order, the Commission fulfills its obligation under Section 9 of the Act to collect regulatory fees to recover the agency's costs of operating. Regulatory fees, which cover the costs of our user information services and our enforcement, policy, rulemaking, and international activities, are not insubstantial. Moreover, despite the significant changes in the communications industry and the Commission's regulatory priorities, the Commission has not conducted a sweeping review of the regulatory fee methodology since 1994. For these reasons, I have issued a yearly call for the Commission to conduct a thorough review of our regulatory fee policies. So, I am pleased that this Order and Further Notice finally does so, seeking comment broadly on the need for changes in the regulatory fees for individual services.

I am pleased that the Commission finally acknowledges that our methodology for calculating regulatory fees paid by submarine cable operators is impaired and requires revision. We must ensure that we take action to adopt a revised methodology to be effective for FY 2009. These providers, who have argued that the current fee structure results in certain operators paying fees that can approach the wholesale prices they receive from their consumers, originally sought changes to the fee structure over two years ago. So, while I fully support our efforts to address regulatory fees more broadly, as we propose in the attached Further Notice, I also support our decision to impose a specific deadline for addressing the submarine cable fee structure, and I encourage the Commission to move forward quickly to implement changes which are long overdue.

For these reasons, I approve this Order and Further Notice.

STATEMENT OF
COMISSIONER DEBORAH TAYLOR TATE

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65

In today's item, the Commission engages in its annual process of adopting a regulatory structure for assessing fees on telecommunications providers. These fees amount to well over $300 million and finance the vast majority of the Commission's activities. Given this sizable tax burden on the telecommunications market – and ultimately on the telecommunications consumer – it is important that these fees be equitably assessed but not unduly burdensome.

Some parties have raised a concern about whether these fees in fact are equitably assessed, and I am pleased that we are now focusing more on this issue. As technologies change and consumers move across services and platforms, the Commission should review how its regulatory fees have differing impacts on service providers and their consumers. Since this issue affects the entire industry and any change potentially would impact – either positively or negatively – all service providers, I encourage industry to propose an equitable solution to the assessment of regulatory fees. Nonetheless, in the absence of an industry proposal, I am committed to working closely with my colleagues to resolve this matter.

STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65

In this Order, among other things, we agree to reform our methodology for calculating regulatory fees for international bearer circuits within 60 days of adoption of the Order. The Commission has been reviewing this issue for three years. We have heard and considered the proposals and views of the relevant parties -- common carriers and companies with submarine cable interests and cable landing licenses. It is time for the Commission to make a decision that makes sense given the incredible expansion of capacity on these systems in relation to the regulatory costs generated by the operators. I look forward to finding a solution that will result in lower regulatory fees and that will treat providers in a nondiscriminatory and competitively neutral manner.

The Further Notice of Proposed Rulemaking seeks comment on several issues regarding the calculation of fees for interstate telecommunications service providers, international and interstate toll services, digital broadcasters, IPTV and DBS providers, cable operators and private land mobile radio services. I look forward to hearing from all of you on these issues.